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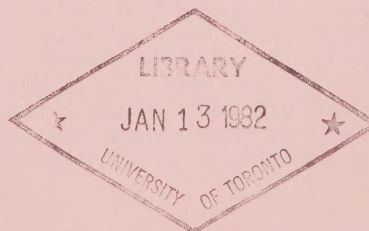






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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
THURSDAY, OCTOBER 1, 1981  
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Mitchell  
Kennedy, R. D. (Mississauga South PC) for Mr. Andrewes

Clerk pro tem: Arnott, D.

From the Ministry of the Solicitor General:  
Hilton, J. D., Deputy Minister

Witnesses:

Feldhammer, L., Chairperson, Committee for Racial Equality  
Newton, S., Chairman, Positive Parents of Ontario





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 1, 1981

The committee met at 10:09 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. May we commence? We have four representations today so I would like to move ahead on time. Mr. Newton, would you come up to the end table please. Mr. Newton is chairman of Positive Parents of Ontario. You have no written brief, have you?

Mr. Newton: Yes, sir, I have. It has already been distributed I understand. I passed out copies.

10:10 a.m.

Mr. Chairman: Gentlemen, you can mark that as exhibit 20 if you wish for reference, the Positive Parents of Ontario document. Would you carry on please?

Mr. Newton: Mr. Chairman, the front page of my presentation is an addition that has come up since Saturday so I included it, but I would like your permission to read it.

Prior to making my presentation to this committee I wish to make the following remarks. Last Saturday, September 26, between 1 p.m. and 3 p.m. a demonstration was held in front of my retail shop at Yonge and Eglinton. The demonstrators included homosexuals, lesbians, feminists, Marxists and others. These demonstrators were aided and abetted by a city alderman from the NDP coalition at Toronto city hall.

With this and past instances in mind, I make the following comments. Toronto city politics is a hotbed of potential anarchy and vile politics. It is a public agency that has been brought down to a point of degradation unparalleled in this city's history. The NDP coalition at city hall and at the Board of Education for the City of Toronto leads to lawlessness and criminality on the part of those who patronize groups that seek to eat out the vitals of a thriving city and threaten its moral destruction.

These politicians are the enemies of good government and a dangerous menace to the majority of decent citizens who elected them to office on the blind premise that they would uphold the forces of law and order and of decency rather than working for

their destruction. I identified a group simply because its literature passed out on the street identified those particular groups as demonstrating with it.

Mr. Williams: Who is the city alderman in question?

Mr. Newton: David White. It was not the first time Mr. White has participated in public rabble-rousing.

I will proceed with my presentation. Police brutality is a matter of serious concern to many citizens of Toronto and they feel that our police should be protected from it. Seven of our police have been fatally shot in the last nine years. Many others have been wounded, others have been assaulted, spat on, lured into traps and had every kind of garbage and other missiles thrown at them. They have also been verbally assaulted by some citizens who got caught speeding, parked over time or got caught breaking other minor laws.

I believe I can say in all honesty that most people, including the police officers, would shrug and say, "It's all part of a job that must be done and such attacks are all in a day's work." The police are trained professionals well able to defend themselves from the onslaught of rising crime and the dangers that accompany it.

However, I wish to state they are not trained to take the harassment and verbal abuse dished out by red-tinged politicians who only show their true colours once safely elected. I am talking about politicians like Gordon Cressy, Pat Sheppard, David White and others who are led by comrades John Sewell, Alan Sparrow and Dan Heap, who take every opportunity to belittle and degrade the police. These politicians and the criminal element they support are well aware of the permissiveness of some judges and parole boards, so it is no wonder the always dangerous job of a policeman is becoming even more difficult.

During my short but active time on the Toronto scene I have heard stories of students being paid to do sit-ins and chain-ins. There is no doubt in my mind that many of the spontaneous demonstrations we have recently witnessed in downtown Toronto have been planned, produced and directed by some of the politicians I have named and that they actually participate in the rabble-rousing if certain media friends are there to give it proper coverage.

I am certain we have the finest police force in the world. My reason for thinking that is simply because of the massive effort being put forth to discredit it. The carefully conducted civil demonstrations by homosexuals in Toronto are always followed by a barrage of propaganda against the police. Most of these militant homosexuals are very happy to be used by red-tinged politicians for it stands to reason that, once the police are brought under control, there will be no official agency to control them and we then have another frightening San Francisco situation.

Many policemen are aware of what police brutality is all about. Police brutality is inflicted on our police by many



citizens, but the most blatant distributor of police brutality has to be Prime Minister Pierre Elliott Trudeau. Under his relentless and persistent undermining of police credibility, we have seen this once godly nation sink to the unholy depths of rampant immorality and permissiveness that can only be likened unto Sodom of old.

His watering down of many federal criminal laws has also seen this nation subjected to an ever-increasing crime rate. We have seen criminal elements exalted and our police degraded. An avalanche of pornography and smut have followed the relaxing of federal laws permitting the practice of homosexuality.

Child-related sex crimes, rapes and other degrading crimes are rampant in a nation that sees criminals encouraged by permissive laws while the police agencies are being put in a vice-like grip by a man who boasts the following deplorable record as outlined in the Canadian Intelligence Service, volume 25-5. It may give some clues of why he degrades the police.

In 1940, "booted out of the Canadian Officer Training Corps (COTC) during the war for lack of discipline"--Robert McKenzie, Toronto Star, March 3, 1968.

In 1951, "back in Montreal, he launched the leftist publication Cité Libre. Among the well-known Reds who collaborated, we note Professor Raymond Boyer (convicted of Soviet espionage in the Gouzenko case); Stanley B. Ryerson, leading theoretician of the Communist Party and editor of Marxist Review; Pierre Gelinas, Quebec director of Agitation and Propaganda ("Agitprop") of the Communist Party."

In 1952, "led delegation of Communists to the Moscow Economic Conference."

In 1953, "barred entry into the United States as an 'inadmissible' person."

In 1967, "while Minister of Justice, credited in Red press with intervening personally to reinstate hippie rag Georgia Straight, which had been banned by Vancouver Mayor Campbell for obscenity; introduced bill to legalize abortion and homosexuality, spearheading a drive to shift Canadian justice from scriptural to humanistic basis."

Police brutality is the angry, frustrated homosexual or lesbian who wants publicly to flaunt his or her perverse lifestyle and vents that anger by spitting on a policeman's face or punching him in the stomach. Police brutality is the wife of a politician who baits the police at a homosexual demonstration and just happens to witness a policeman striking a homosexual. That's Mrs. David White, by the way.

Police brutality is a cop hater like Sewell who preaches concern and compassion for everyone from Marxists to homosexuals and then turns his back on the grieving widow of a slain police officer and refuses to attend his funeral. Police brutality is the likes of Clayton Rubys, Dudley Laws and Alan Sparrows who take

every opportunity to abuse the police and yet support anti-social groups who disrupt society.

Police brutality is the reporter or the editor who writes with a poison pen because he could not park in a no-parking zone or got caught breaking a minor law. It is the TV cameraman or photographer who patiently waits for that confrontation picture which shows a policeman with his hands on a demonstrator and finally winds up on page one.

It is the CBC reporter who just happens to be handy when a homosexual states he has been harassed or manhandled by a policeman. It's the "neutral" TV news editor who publicly calls police pigs and Fascists. The list goes on but it only takes a few with access to the media and a few media friends to do the dirty work.

We are now approaching Hallowe'en. This is the time of year homosexuals want the police to protect them while they dress up like peacocks in women's clothing and parade around our streets expecting the police to spend many hours as mobile babysitters, protecting their right to do so. Once Hallowe'en is over, they will then cry that those same police officers have more to do than harass them while they harass or molest people in public parks, public washrooms, et cetera.

Civilian review boards and civilian police complaints bureaus are just another way to get the police from under the control of elected officials and subject them to the discipline of a citizens' group which could be infiltrated by people like Sewell, Sparrow, Cressy, Sheppard, White or other fellow travellers so they would be in a position to mete out harsh punishment and harassment from within until the police became numbed, neutralized and unable to function properly as a peace-keeping force.

10:20 a.m.

In 1958, Philadelphia and a few other American cities decided to experiment with civilian police review boards. The results were devastating. The biased decisions made by such boards undermined police morale to such a degree that certain phases of police service became useless.

FBI reports in the USA state, "Where there is an outside civilian review board, the restraint on the police was so great that effective action against rioters was impossible." Another FBI report states, "In one city with a civilian review board, the police were ordered to withdraw from a riot scene."

The most militant vocal group across Toronto is the homosexuals. They recently joined forces with their lesbian counterparts as well as militant feminists and Marxists. They united to put up a common front to fight the so-called right, which used to be called the majority. The red-tinged politicians who inhabit city council are no doubt responsible for this welding together of the various malcontents and no doubt will keep crying for control of the police.



The logical question must be put: Who benefits when the police are handcuffed? The answer: Only those who wish to disrupt society for their own purposes. The police are trained professionals quite capable of maintaining discipline and high standards within their own force. I don't hear anyone demanding that civilian review boards be set up to monitor the medical profession. I don't hear the Clayton Rubys of Toronto demanding outside review boards for the legal profession.

Let's face it, all professional groups such as teachers, engineers, dentists, architects, doctors, lawyers, firemen and many others monitor their own professions, for who is more capable of doing such monitoring than the people who are familiar with the duties and requirements of their chosen profession. Let's recognize the fact that our police are trained professionals who have the respect and admiration of the majority of citizens in Toronto.

In my opinion, no government could do a greater disservice to the police than to subjugate them to the intimidating influence of unprofessional civilian review boards.

We have several police forces in Ontario. It is my understanding that they take delight in investigating each other when called on to do so and, as we have witnessed in past investigations, do not spare brother officers if those officers are found to be conducting themselves in a manner that would bring discredit to their profession.

Let's put the handcuffs back on the criminal where they belong and get off the backs of our police so that they can do the job they were hired and trained to do.

Mr. Williams: Mr. Newton, that is certainly an interesting brief you have put before the committee this morning. It is somewhat different in approach from those we have had from other groups up to today. I must say you don't hold back any punches in expressing your particular point of view in this matter. Could you enlighten the committee as to your organization, Positive Parents of Ontario? When did your organization come into existence and what is your representation? What are the main objectives of the organization?

Mr. Newton: I am asked that question by many people, sir. There are thousands of people out there who support me and whom I represent. Part of my strength is that nobody knows and nobody is going to know. My funding comes from various people who seem willing and who feel strongly enough to support me in what I do. I have other people who are behind me. If the occasion arises when Stew Newton goes out on a limb and gets chopped off, these people will step in and fill the gap.

I don't intend to get involved in controversial issues. I don't want to be labelled as this or that. Let them scramble around and let them find out where I am. I listen to so many of these people around telling me I belong to this group or that group and they stand up as lone people who are supposed to

represent thousands. I find out that they stand up alone and they have a phony name and nonexistent organizations. I don't feel I should have to travel that road and I don't intend to.

I stand there. What I say, I live with. It is my sole responsibility. If anybody wants to get on anybody's back, God bless them, let them get on mine.

Mr. Williams: I have a question about the addendum to your main brief that you read at the beginning of your presentation. I am not familiar with the particulars of this incident that took place on September 26. What brought this about and what type of business do you have that caused--

Mr. Newton: I have a jewellery store at the Yonge-Eglinton Shopping Centre. I spend a great deal of time in that store, of necessity. The homosexuals, along with the other groups (inaudible) literature that they pass out decided that they would have a demonstration in front of my store on Saturday. They brought up their group of nuns--they are called the sisters of perpetual indulgence--and I understand they sang their hymns outside the store. I didn't go outside, but David White made his little speech; if not David White, somebody else or another one.

They disrupted Yonge Street for approximately two hours. They came to me and asked me what my opinion was and my opinion is, as I will state now, that Newton Jewellery is still in business and Positive Parents is still in business. I haven't changed my mind one particle. So why they were there, I don't know because it doesn't accomplish anything except to get more exposure on TV for them, I guess.

Mr. Williams: In other words, this arose out of your outspoken views that were not favourably disposed to that particular element in the community.

Mr. Newton: It is too bad that I have been branded as a homosexual baiter or fighter, because I am not. My original start in getting involved in this was because of children, because I know the record. I read the records, I read the surveys in the United States, I know what is happening in the United States. It is too bad more politicians don't read it. If they read and understood that the only way these people can survive and exist is to recruit, the attitudes of society would change.

That is where I am at. I am not a homosexual baiter. I have never called a homosexual any other name than a homosexual. I have never spat at one; I have been spat at. I have never called one a Fascist; I have been called a Fascist, I have been called a bigot, I have been called it all. I don't retaliate by calling names.

I have a job to do, I am going to do that job. That job is to protect children. I will do it to the best of my ability. If they want to brand me as a homosexual whatever, fine, I can't help that.

Mr. Williams: I guess you like to call a spade a spade. Is that what you are saying?

Mr. Newton: That is right.

Mr. Williams: Let us get to the police bill itself before us. I gather that, in fact, what you are saying is that there is no need for this legislation at all. Is that what you are saying? Although you don't really address specific parts of the bill--I am not sure whether you are opposed to the bill for reasons different from what other people have put forward, or simply that you don't think it is necessary--are you suggesting that perhaps the bill, in its present form, would be acceptable and would deal fairly both with the police and those who complain against the police?

Mr. Newton: I don't like to see too much interference with the police. Up until now they have done a good job. We have started to see a deterioration within the last few years. The only way I can come to that conclusion is that we read many times where a doctor, when he makes a mistake, a life is lost. I don't see these same people who want the police shackled standing up and saying, "We have lost 12 lives because doctors were careless this year. Let us investigate them and find out why," because they are not competent to do so.

When they take down law and order and start tearing it apart, the rest of these people then have access to the rest of society to play at their will. So the police are the only and last bulwark between the average man out there on the street and the criminal elements that would like to get a share of the action without working for it or doing anything for it. So I think the police have done a fantastic job. We have the best police force in the world.

Mr. Williams: Assuming that we go forward with this particular bill, could you enlighten the committee as to what your views are with regard to the structuring of this police complaints board that is being set up as far as representation is concerned? There has been some criticism that it is going to be weighted in favour of the police. This is the allegation that has been made from some quarters. What is your feeling?

I presume you are familiar with the structure of that board, with one third of the people trained in the law, one third appointed by city council and the other third by the police commission.

10:30 a.m.

Mr. Newton: I do not know how to answer your question, but unfortunately, a number of the politicians I have come to deal with talk out of two sides of their mouth. When they are in their constituency, they are fantastic; when they get to Queen's Park, they change. I know a couple of them. When they are out on the hustings making promises, they make promises.

The only reason I refer to that is that man gets elected to Queen's Park fighting for law and order, and once he gets in and he winds up on a commission such as the one you are talking about,



and all of a sudden his views start to change, somebody gets to him. Possibly somewhere along the line a policeman was unkind enough to give him a parking ticket because he happens to be an MPP. I have seen these things happen as well.

The thing is the board would have to be, in my estimation, carefully screened and people would have to come out of vocations other than the political side of the sphere, but somebody would have to be there with a pretty keen eye and a pretty keen ear to be sure, because the ultimate goal, let us face it, of some of these people is to destroy the credibility of the police, that is all.

Mr. Williams: Just a couple more questions, I presume that you see no objection in the initial stages of the bill that give the chief of police the opportunity to initiate an investigation where a complaint is lodged during that first 30-day period, and if satisfaction is not provided that they go there to the complaints office.

Mr. Newton: That is right, that is the way it should be.

Mr. Williams: You are satisfied with that procedure?

Mr. Newton: Yes.

Mr. Williams: As a matter of interest, how long have you been involved in speaking out on community issues?

Mr. Newton: It started about a year and a half ago at the Toronto Board of Education when the homosexuals once again wanted to sneak in--I say that very kindly, sneak in--a liaison group to counsel children in sexual orientation. At that time we had a coalition of 11 NDPs on the Toronto Board of Education. At that time they had a majority and they were going to whip it through without any discussion or anything else. It just happened that a reporter leaked it to the press, and I happened to read about it, a number of other people read about it, and we got quite incensed, not that they should even contemplate this but the method of doing it. So that is the way we went.

To get back to your original statement, another thing that sort of gives me some concern about committees is that I made a presentation before a committee on Bill 7. I have a copy of Hansard--I referred to it at that time--in which James Renwick, Robert Elgie, Mr. Roy, Richard Johnston, sat down in a nice comfortable committee room for a committee meeting one night and discussed the possibility of putting through sexual orientation on an all-party agreement. Mr. Renwick got rather upset when I made this statement, but it is in Hansard of November 26, 1980, it is a matter of record. This is what concerns me, that things could be done this way.

If we are going to have a police commission or a review board on anything that is going to happen in the way of changing laws, I think particular attention should be made that this should become a public forum type thing, discussed in the House, where everybody is aware of why it is happening, what is happening, who



proposed it and so on, so that we know. You can fight the enemy you know but you cannot fight the one you do not.

Mr. Williams: That is not really germane to this particular matter before us, but I just wanted to get clear on that one point. You say a meeting had taken place between members of the different parties to come to an agreement with regard to a matter in that bill?

Mr. Newton: Are you talking about Bill 7, the one I just referred to?

Mr. Williams: Yes.

Mr. Newton: On Bill 7, when I made my presentation, I am going back to last year during the municipal election when I got rather involved, some members thought it would be a nice idea to investigate Stew Newton and find out where he came from, to find out whether he was a member of the Ku Klux Klan or the Fascists or whether he was on Mr. Hitler's side somewhere in Germany many years ago. When they got around to this I started getting interested in some of these people. I would like to find out where they come from, where their funding comes from, what groups they represent. So immediately some guy says to me, "I am So-and-so, I represent these people up at the University of Toronto," I like to find out where he comes from. I make it a point to find out who he does represent. Many times I have come up with a blank, I have come up with one individual.

I got interested in reading Hansard. So a copy was passed over to me that showed that in fact on sexual orientation such a discussion took place. These people were present; it was recorded, as I say, in Hansard on March 25, 1981. They do not like to discuss it but the fact is that it was done previously, by the way, on a proven point, I believe on union checkoffs. There was an all-party agreement that was put through. So this is the type of thing that concerns me, that we could have this type of action without it being publicly debated in the House. Shortcuts can be found if they wish to find them.

Mr. Chairman: Is there anyone else who has any questions of Mr. Newton? Thank you very much for your presentation and for appearing before us.

Gentlemen, our next witness is due at 11 o'clock. I hesitate to start early. That is Mr. Feldhammer for the Committee of Racial Equality. Mr. Feldhammer is not here, am I correct?

Mr. Breithaupt: Perhaps we could recess for 20 minutes.

Mr. Chairman: Yes. Gentlemen, would you please be back at 11 o'clock because we have been running late.

The committee recessed at 10.40 a.m. and resumed at 10.58 a.m.

Mr. Chairman: Gentlemen, we have a quorum.

Mr. Philip: Do we have an exhibit on this?

Mr. Chairman: No, there is no exhibit, no brief. It is an oral brief only. Mr. Feldhamer is the chairperson of the Committee for Racial Equality. He also has advised the clerk that he is a member of the Coalition against Bill 68, and so he stands by the written submission or brief of the Coalition against Bill 68.

Mr. Feldhamer: I will be very brief, but I did bring a statement of principles of the Committee for Racial Equality that you may be interested in looking at just to give you some background of the nature of the organization.

Mr. Chairman: Fine. The clerk can distribute those.

Mr. Feldhamer: I do not intend to dwell on many of the specific deficiencies of the proposed legislation, that is because I am assuming many of you have already heard that from other community organizations that are members of the Coalition against Bill 68. None the less, I am more than willing to answer queries about the specific clauses in the bill.

What I would prefer to dwell on is what I perceive and the Committee for Racial Equality perceives to be the major problem, and the major problem is the legitimacy and the credibility of the legislation, and by definition that means the legitimacy and the credibility of the legislators.

The fact of the matter is--and this is the point--no one supports the bill. It is hard to proceed after making that statement: No one supports the bill. It is impossible to locate, to delineate, to show any visible minority group, any ethnic community organization, any trade union that supports Bill 68.

Mr. Philip: Even Positive Parents of Ontario this morning didn't support the bill.

Mr. Feldhamer: So we have got, you have got, we have all got a problem. Let me make something clear in case you are misinterpreting what I consider the essential point of that statement. Most of us are for a civilian review process, obviously--that is why you are presenting this legislation--but the real problem is that out there on Manchester Avenue, not in Queen's Park, but on Manchester Avenue, there is a generalized and intensifying perception of problems vis-à-vis police behaviour.

I am not here to accuse police of police misconduct. The Committee for Racial Equality does not see this as germane. What we see as germane is the assumption that citizens must be protected in the event, potential or real, of police misconduct. Whether there is or has been police misconduct is not relevant, vis-à-vis the bill and its specific content. No one here in this room would suggest that we get rid, for example, of speed-limit legislation on the argument that no one breaks the speed limit. We would still have a rule in case someone would break or intends to break the speed limit.

So it is with this bill. There may be police misconduct. There may be abrogations of citizens' rights. That is why you are presenting Bill 68. We accept that as legitimate. But the bill is so deficient that what it does is exacerbate the problem, that is, the lack of legitimacy. People are not stupid. Where I come from, I suppose in plain English we would call it a snow job.

No one is against legislators trying to engage in the improvement of their images or anything else like that, but this is so bald in its inability to do that that it is not fooling anybody. It simply isn't fooling anybody; it is a waste of time. Even the government's appointee, Mr. Linden, admits this in public, that he can be held up forever and a day from applying some of the terms of the proposed legislation.

Anyway, I think the major point I wanted to make is that it does not deal with what your major problem is, namely, the increasing erosion of legitimacy and credibility of the Legislature, exemplified through many things, but specifically by Bill 68, which pretends to satisfy an increasing need for protection on the part of citizens against potential police misconduct and which blatantly and rather shamelessly fails to do that.

I can go through some of the list of deficiencies. The accused is, of course, simultaneously both judge and jury. The complaints process favours the one who is being complained against. For example, the motion of the public mischief charge being necessary in order to deter frivolous complaints--

Interjection.

Mr. Feldhammer: I don't know if you want to look at that argument, it is rather horrendous. It kind of illustrates what is basic to the whole of Bill 68, which is that it insults people. The assumption is that people are stupid, and that if we let them complain we will get a galactic tidal wave of citizens coming in making frivolous charges.

Who in this room would apply the same argument vis-à-vis public parks? There are people who misuse public parks, but I'm sure you have noticed that historically people use things for what they are intended to be used for. The overwhelming majority of us use public parks as parks; the overwhelming majority of us use medical care systems when we are sick. There are a few hypochondriacs who misuse the medical-care system. No one in his right mind would suggest that that is a reason for getting rid of our medical care system or our schools or whatever else. People use their social facilities and their protections legitimately. Historically this has always been the case.

The notion that if we are given the right to have protection to complain against potential or real police misconduct we will all go berserk and flood the social-political process with frivolous complaints has absolutely no merit. There is no evidence to support this. It simply is insulting.

One could go on. The right to examine is not open to the



complainant, but there is access to the one who is being complained against in terms of examining evidence in documents.

The level of proof is a wonderful little contradiction in Bill 68, and people see this. For example, the standard of proof is, of course, the highest level of proof; you have been told that by other people who have spoken to you here: it's the criminal level of proof. Yet the officer who is being complained against does not in the bill face criminal consequences. I don't know if I have to go on about that little contradiction. What are we looking at here?

Mr. Philip: If the investigator found there was a criminal charge, would he not automatically be charged under the Criminal Code?

Mr. Feldhammer: There is nothing in the bill that says the officer faces criminal consequences such as imprisonment, fines or probation--nothing in it at all.

One could go on and on about this. I want to get back to the major point. The complainant, of course, is responsible for his or her own legal costs. In the bill legal costs may be taken on not by the officer but by the Metropolitan Board of Police Commissioners. In this day and age we all know that without skilled legal help, regardless of the internal content, the merits of the case, one just doesn't stand a chance without a lawyer against another party with lawyers. That is just the case. Nevertheless, the bill not only does not deal with this problem but actually gives one party in the dispute access to that and puts the burden on the other person. Most people who face these problems of potential police misconduct are not well-to-do. That is a sociological fact. Without access to legal aid and legal skills it's not even called, in plain English, pretending to be fair.

The professional analogy which the Coalition against Bill 68 has mentioned and which, I am sure, most of you are familiar with, the response that doctors and lawyers have the right initially to investigate misconduct or malpractice or (inaudible) of professional ethics by one's peers and that police ought to have the same right, simply doesn't hold up. When a doctor or other professional has the right of his peers to investigate there is still nothing against police investigating it at the same time. What we are looking at is a situation where both can occur at the same time. Even if the Royal College of Physicians and Surgeons in the province of Ontario found their peer innocent after their investigation, that does not alter the fact that the police, representing the larger social system, can still find otherwise and charge him with a crime.

11:10 a.m.

The question I have to ask is, If that's the case for all other sectors of society, where do we have that for the police--the representative, after all, of governmental authority in terms of social order and peace? We don't have that. Who is going to investigate the police? Doctors can investigate



doctors--fine; but police can also investigate them, and that's an essential analytical distinction. It's qualitatively different. So we have professionals with the right to investigate themselves--no one is disputing that. But in this case we have one profession where they are investigating themselves and nothing else is going on. There is no other protection.

There is something else about the bill that disturbs people very much in the Committee for Racial Equality and the affiliated organizations in the Committee for Racial Equality, and that is the crimes of omission. I use the word "crime" very deliberately. You may or may not know that racism is a crime in our society. Its status legally is incontrovertible. It's not a matter of opinion; it's not a matter of freedom of speech; it's a crime. I say this because the government of Canada has three times signed, on behalf of you and me, international covenants so stipulating, and has obliged and committed itself to prosecute those who advocate or practice racial discrimination.

There is nothing in the bill that gives any citizen who is a real or potential victim of racially discriminatory behaviour, with regard to police behaviour or any other, any reassurance whatsoever. Police misconduct is not merely an active act of mistreatment of a citizen; it is also not performing what they are obliged to perform in terms of protecting the citizenry.

We have all experienced that in the last year. We, gentlemen, have seen crimes performed in public. We have seen them, as a matter of fact, described in great detail on the front pages of our local newspapers. We have had people stand up and acknowledge on the front page of the Globe and Mail that they conspired to invade a foreign state through force of military arms, proudly proclaiming this. That's a violation of the Criminal Code of Canada. We have had people proclaim proudly that they have conspired with others to murder somebody in this country, to murder anybody. That's a violation of the Criminal Code of Canada.

What have we seen as a response to these blatantly, publicly acknowledged crimes? We have had the police warn the criminal that he may get into trouble from those he intended to murder. No one on Manchester Avenue feels very protected from that kind of behaviour. They are worried.

The bill won't work. The bill will simply mean that people who do feel, rightly or wrongly, that their rights have been violated will not complain to the complaints board. It will be too costly not only financially, not only socially, but personally. They have no reassurance; they give no credibility to the complaints review process that is set up in Bill 68. It simply won't work. Minimally, all I am here to tell you is that if you are purporting to give the citizens of the province of Ontario some protection, then Bill 68 fails to do that; and if you are purporting to give the citizens of the province of Ontario the feeling that they have some protection against police misconduct, let alone the reality, it doesn't even do that.

There is a thing called winning and losing elections. I understand that. But the problem really is that the legitimacy of

this Legislature is so rapidly eroding that in this building one can actually be happy about winning an improved majority. On what base, gentlemen? Twenty-five per cent of the electorate, and that's proclaimed as a victory. You've got a real problem. You have a problem of winning elections when no one is voting, and no one is voting because you are giving them Bill 68s. It's just not going to work.

Now, I'm not here to criticize; I'm not here to dump on anybody. I'm just telling you what's coming down the road. What's coming down the road is that more and more people are staying home, and we are loudly proclaiming we won a new majority. A new majority of what? I don't want to spell out for you the end result of this road, but you're all adult human beings. You can work out for yourself what the ineluctable conclusion of this process means for all of us.

We must feel some protection against police misconduct. We must. That's why you have proposed Bill 68. It fails to give us that sense of protection.

I'm finished.

Mr. Chairman: Mr. Hilton, you had one comment you wanted to make.

Mr. Hilton: I have one or two comments. I was interested, Mr. Feldhammer, in your observations about charges of mischief. Is it your perception that the bill has anything to say one way or the other about the charge of mischief?

Mr. Feldhammer: What the bill does is to say that there is a right to lay a criminal charge of public mischief against a complainant if it is perceived or if it is thought that the complainant has made the complaint frivolously. There is that right.

Mr. Hilton: Where is that stated in the bill, sir?

Mr. Feldhammer: It's not stated in the bill?

Mr. Hilton: Where is it stated in the bill?

Mr. Feldhammer: I haven't got a copy of it. You are probably the legal--

Mr. Hilton: I can provide you with a copy of it.

Mr. Feldhammer: Is it not there?

Mr. Hilton: No, sir.

Mr. Feldhammer: Then I have been misinformed. That's quite all right. It's not relevant, anyway. Not only do I stand corrected if what you are saying is correct; I am delighted to hear it.

Mr. Hilton: Mischief is a charge under the Criminal

Code. The Criminal Code, as I think you know full well from what you have said, is a matter within the jurisdiction of the government of Canada, not the government of Ontario. This bill would be ultra vires if it in any way affected the charge of mischief as it now exists and could continue to exist.

Mr. Feldhammer: Okay. Well, I'm not here to get into legalistic arguments. Let me just ask something for my own clarification and for the clarification of the organization I represent. If a complainant makes a complaint that is deemed frivolous or unjustified or just blatantly and obviously illegitimate, if there are no grounds for the complaint whatsoever, is there in law the right for the person who has made this complaint to be charged with public mischief?

Mr. Hilton: He would have to do more than what you have said. The charge of public mischief is, as I say, a charge laid under the Criminal Code, not under any provincial statute. It would be an invasion of the criminal law if that happened.

Mr. Feldhammer: I see.

Mr. Hilton: In addition, if I can help you on that, to be successful in charging a person with mischief you would have to go to the intent of a person in laying the charge, and it would have to be not just that it was frivolous or that it was unfounded but rather that the charge was laid to put the hounds off the track, so to speak. You'd have to show some sort of animus in the situation.

Mr. Feldhammer: You see, this simply illustrates and confirms and reinforces the central point I'm trying to make to you, which is that in the Committee for Racial Equality--and we are not the only ones; there are other organizations; we are always getting them too--they are afraid to lay a complaint because they have been told that, should they do that, they will be charged.

I am not discussing the validity of that statement. I am discussing the perception, which is the problem.

11:20 a.m.

Mr. Hilton: All right, Mr. Feldhammer, if I may. You, the coalition, have been represented here by lawyers, and they are trained. It should be your duty, I think, as chairperson of this organization, to find out from them what is the law, and inform those who come to you with those concerns as to what their legal right is.

Mr. Feldhammer: Yes, but you have not dealt with the point I am making. The point I am making is that we have citizens, and not a few of them, who perceive a problem, and the problem is very simple. Rightly or wrongly, should they make a complaint, their understanding is that they will get into trouble. As a matter of fact, many of them say, again rightly or wrongly, that when they talk about making a complaint, police officers threaten



them with charges of another kind--with battery--with assault, and they are intimidated.

The point is, whatever Bill 68 does or does not do, surely at its very essence it pretends to remove the sense of intimidation felt by the citizens of this province should they consider making a complaint. If it does not do that minimal amount of good, why are we talking about Bill 68?

Mr. Hilton: That is a good question, because Bill 68 has nothing to do, nor could it have anything to do, with the subject you are addressing.

Mr. Elston: Oh no, I think the perception of the citizens of this area has a great deal to do with this piece of legislation. Even though the bill does not speak directly to the point of public mischief, the charge, which has been raised by more people than this gentleman--

Interjection: Oh, it has.

Mr. Elston: I can agree with that. It has everything to do with the perception of the public in their dealings and interrelations with the police in Metropolitan Toronto. I think you are being slightly unfair to this witness.

Mr. Hilton: I am submitting to you, sir, that if those who are concerned about this made known what must be the basis of a mischief charge, the fear would largely be dissipated.

Interjections: Oh no.

Mr. Feldhammer: I do not think I can agree with that.

Mr. Hilton: I make that statement. You do not agree with it.

Mr. Philip: Mr. Hilton, with the greatest respect, as a practising politician, I have had a number of people into my office. Even though I am not a lawyer, I suggested that they check it out with a lawyer when they had complaints against the police, as to whether or not they would file those complaints before their court hearing came up, or after that court hearing. Because they had real fears that the charges would be upped, or the ante would be upped, as a way of intimidating them from laying those complaints against the arresting officer.

Mr. MacQuarrie: This is a different set of circumstances from public mischief then.

Mr. Philip: That is correct, but it is the same kind of fear, I think, that Mr. Feldhammer is talking about. It is a very real fear out there, I can tell you, from very real people who come into politicians' offices such as my own, and I notice that members of other parties are indicating the same kind of experience they have had.

Mr. Hilton: Since, though, you are talking about matters



political that happened in your political office, I respect your admonition and will not comment on it.

Mr. Philip: Nothing political happens in my riding office. It is a government office, and I keep politics out of it. As a matter of fact, I shall not accept a membership in my riding association of the NDP in my office.

Mr. Laughren: Send them to mine.

Mr. Feldhammer: May I interject with a very brief comment? Why is Bill 68 being proposed? Clearly because there is a perception of a problem, and Bill 68, I would assume, purports to deal with this problem.

Mr. Hilton: I am only dealing, sir, with the remark that you made in relation to charges of mischief.

Mr. Feldhammer: But it does not deal with the essential point.

Mr. Hilton: I do not propose to deal only with the essential point. You raised the subject and so I am questioning you as to what you know about it.

Mr. Feldhammer: Right.

Mr. Philip: --that is related to Bill 68 in a very direct manner, and that is related to this issue, is that people feel uncomfortable about making complaints to a police officer. This bill provides that kind of avenue rather than an independent investigator. That is how what Mr. Feldman is talking about relates in a very direct way to part of his bill.

Mr. Hilton: You spoke of international treaties signed by Canada as though if Canada signs a treaty that is then the law of Canada.

Mr. Feldhammer: Wait, let us understand very clearly, when Canada signs an international treaty it is not automatically the law of Canada. What is automatic is the obligation of all levels of government to do their level best to live up to the terms of that international treaty. Otherwise, we are looking at exactly--here we go again--fraudulence and hypocrisy. Is that what are you suggesting we are dealing with?

Mr. Hilton: No, I am not. I have argued this many times in the Supreme Court of Canada and I happen to know what I am talking about on this subject. A treaty has no validity in Canada, no matter who it is signed by, until a law is enacted in Canada making the law of Canada the subject of the treaty.

Mr. Feldhammer: Quite totally, legally correct. Now let us talk about the political process and the moral situation. Why are we signing an international treaty if there is no intent to even consider the contents of that treaty domestically?

Mr. Hilton: Very often they are considered, but they are not able to be carried in the House.

Mr. Feldhammer: That may be the case.

Interjections.

Mr. Hilton: That has happened innumerable times, Mr. Laughren.

Mr. Feldhammer: It certainly does not help the problem you have, which is legitimacy and credibility of the governmental administrative process, which is what we are talking about.

Mr. Hilton: I am only discussing your remarks, sir.

Mr. Feldhammer: I understand it is not the law of the country.

Mr. Hilton: You talked also about criminal consequence to police.

Mr. Feldhammer: Yes.

Mr. Hilton: Are you aware that many times police investigate police and charges are laid?

Mr. Feldhammer: Yes.

Mr. Hilton: All right. Thank you.

Mr. Feldhammer: Can I add something to that? It is the position of the Committee for Racial Equality that the overwhelming majority of police are skilled professionals who perform a very difficult job, and an increasingly difficult job, very well. I want to make something clear. Bill 68 is something that protects the citizens, apparently--and this is the point, it does not do that--against potential police misconduct. Nobody in the Committee for Racial Equality is charging the Metropolitan Toronto Police with rife incompetence.

Mr. Hilton: There are bad apples in every barrel and we have to be protected against those. But the majority of the apples are good ones.

Mr. Feldhammer: Which Bill 68 pretends to deal with. The point is, it does not. It simply fails to do that.

Mr. Hilton: In your opinion.

Mr. Philip: That is the opinion of each of the delegates who have come before us from every voluntary organization.

Mr. Chairman: Mr. Philip, you are the next person who wishes to address the--

Interjection.

Mr. Philip: They don't like the bill either, Mr. Laughren. They say it goes too far.

Thank you, Mr. Chairman. I found your presentation interesting, Mr. Feldhammer, and there were a number of points which I thought were original--that were not in previous bills. Rather than discuss those parts I agree with--there were so many of those--I would like to ask one question about something I really do not know it would work. That is the sins of omission.

Mr. Feldhammer: Yes.

11:30 a.m.

Mr. Philip: I would like to ask you this: Under the police bill--I don't like to use the word "guilty"--but who would you find guilty of an offence of omission in a very specific case. In my riding, I talked to police officers about why it took so long for them to answer to a particular complaint. When I dig deep, I find that perhaps it is because they are simply understaffed. It is physically impossible to be in three places at one time. Maybe in the hereafter, or some other existence, we will be able to do that but right now it is impossible. I wonder whose sin it would be in individual cases.

Would it be those politicians who are underspending, in a particular instance? Would it be the chief of police who perhaps has not used his forces wisely? Would it be the officer who perhaps did not respond to a particular call, or may have had three different things to do at the same time and gave one a higher priority than the others?

I guess my question to you is, while I can agree there are sins of omission being committed out there, I am really not sure who is committing them or where the responsibility would lie in any of the cases I have looked at.

Mr. Feldhammer: Let me see if I can respond to that as succinctly as possible. I think it is important to us to remember that a sin of omission, as I categorize it, is a direct frontal violation of citizens' rights. It is as much a violation of rights as an act which does it.

Mr. Philip: I agree with you up to there.

Mr. Feldhammer: I am just saying it is a violation of rights. I can go on. I mentioned the blatant one earlier in my submission to you orally where people proudly proclaim they have broken the law--to conspire to murder; to conspire to militarily invade foreign states--and nothing is done.

The fact that nothing is done is as much a violation of citizens' rights to be protected from this kind of behaviour as an overt act. There was a fascist group--and I am using this word very precisely and technically; it is not just rhetorical jargon--in front of city hall, the Ku Klux Klan, the Western Guard. These are Fascists, it is a technical term now, who provoked over 2,000



citizens at a public rally in Nathan Phillips Square protesting racism which is their right.

If you look at 281.2 of the Criminal Code of Canada the propagation or dissemination of racism in a public place with a view to provoking public disorder is a criminal offence. The police were there. They did not act. When we in the Committee for Racial Equality went to the police commission to politely and civilly transmit this protest of lack of action to protect our rights, the chief of police--Mr. Ackroyd at that time--said, "Give us evidence." We went to the trouble of doing that--photographs, the literature this group was handing out, et cetera. The evidence was presented. Nothing has happened. Obviously, after all this time, nothing will happen.

That is a violation of citizens' rights. It happens all the time. We are used to it out there on Manchester Avenue. The point is who is responsible? I would suggest, and it is the position of the Committee for Racial Equality, that the person who is not, and we can sort of go through who is not responsible, is the man on the beat. The individual police officer is not responsible. The individual police officer, in our experience, overwhelmingly carries out his or her orders very well.

Who is responsible is the sector that determines what the orders will be. In other words, it is the policy formulation that is responsible, not the actor who carries out that policy decision. The cop on the beat does not formulate policy; he carries out policy. The sectors that are responsible are those who formulate policy in terms of recruitment, in terms of training, and finally, I would suggest, the people here.

Mr. Laughren: Where is Manchester Avenue?

Mr. Feldhammer: Mr. Albert Johnson used to live on Manchester Avenue. I am sorry. I am just using that as--there is Queen's Park and there is Manchester Avenue and the problem we have is the one I keep on getting back to: which one is reality? Is it Manchester Avenue or is it Queen's Park?

Mr. Breithaupt: It is more likely to be Manchester Avenue.

Mr. Feldhammer: Politicians are very good at counting heads. You always want to count heads and I understand that. It is part of the occupational role. If you are going to count heads, there are more people on Manchester Avenue than there are at Queen's Park. I do not think that is conclusive, but politicians are very often swayed by these mechanical vulgar things called counting heads. Do it properly, count properly.

Mr. Philip: As a follow-up then to this discussion on omission, accepting the fact that certain people are perhaps feared more by whatever public organization, be it the police or the civil service, than other people are, accepting the fact that certain groups have more influence, if you want, in society because of their money and so forth, various other forms of influence, if you include sins of omission on here, are you not

really telling the police that, whereas in the past certain types of things they could have overlooked because they were not really doing too much damage and exercise their discretion, will have to be rigidly enforced?

I can just see an employer demanding that every little, smallest sin by picketers on a picket line be rigidly enforced by the police and that fellow, if he happens to have a lot of influence in the community because of his wealth, his position and the corporate world we live in, maybe it would be the guy on the bottom who would really suffer if we included the sins of omission.

Maybe some of the guys on the bottom now, when they commit indiscreet acts, are not getting hammered because the police are using a certain amount of discretion that might not be used if this were in the bill.

Mr. Feldhammer: Historically, of course, at the present moment that is not the case, but in terms of your own question you refer euphemistically to bottoms and tops and the more or less powerful, and we all realize that is part of objective reality. The fact of the matter is, given that objective reality, those with more power, what does more power mean? It means the ability to implement laws. It means the ability to carry them out. It means the ability to make a decision whether or not a particular law will be adhered to and, as you say, enforced rigidly or not.

So what do we find? We find that laws were--to use your example of pickets and an employer--always enforced very rigidly by those who have the power to implement them, which is the employer. It is not the case where the man at the bottom, as you say, gets away with a lot of things because those with power do not enforce the law rigidly. Those in power do not enforce the law rigidly against those in power. It is as simple as that.

This is not sociology; this is common sense. What we are looking at is indeed the necessity to enforce the law rigidly, universally, not the way it has been up to now which is against those without power on behalf of those with power, but that is another question.

I would not take your concern very seriously because the concern, while legitimate and understandable, does not work out in reality that way. Those with power do not have to worry about discretionary nonuniversal applications of law. It is those without who are always having the law enforced rigidly against them. I can go on and on here but I am not here to lecture you gentlemen.

Mr. Chairman: Is there anyone else who wishes to question? Thank you, Mr. Feldhammer, for appearing before us and making your positions known.

Gentlemen, we have come to the end of this morning's session. We will adjourn until two o'clock when Mr. Borovoy will be back to continue his position for one hour and then you will note we have another group coming after him at three.

Mr. Piché: Mr. Chairman, I have a question about Mr. Borovoy. I am the first one who wants to hear further from him, but I am just wondering why he is coming back. Is this opening the door to others coming back?

Mr. Breithaupt: No, he just did not finish and he did not want to upset the schedule.

Mr. Chairman: We will adjourn.

The committee recessed at 11.40 a.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
THURSDAY, OCTOBER 1, 1981  
Afternoon sitting



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Clerk: Forsyth, S.

From the Ministry of the Solicitor General:  
Hilton, J. D., Deputy Minister

Witnesses:

Borovoy, A., General Counsel, Canadian Civil Liberties Association

From the Metropolitan Toronto Committee on Race Relations and  
Policing:

Dharmalingam, A., Chairman  
Frerichs, Rev. E., Member, Executive Committee  
Haile-Michael, Y., Executive Secretary

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 1, 1981

The committee resumed at 2:14 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, I believe we have a quorum in place. We are starting with Mr. Borovoy, who is having a return engagement for an hour this afternoon.

Mr. Philip: We always call the best people back.

Mr. Chairman: Gentlemen, I would ask you to keep it to that hour since this is his second time back, because there is another delegation appearing after him at three o'clock.

Mr. Borovoy had completed his presentation so we will lead off with questioning. Who would like to lead off?

Mr. Philip: I will start leading off with the understanding that I get put back on the list when I finally get to see my notes and find out what I really wanted to ask him this afternoon.

Mr. Borovoy: These are just your preliminary questions?

Mr. Philip: Preliminary questions.

Mr. Williams: It is called floundering.

Mr. Philip: Since nobody else wanted to flounder.

Having had your first appearance before the committee, and no doubt having followed the deliberations of the committee, have you had an opportunity to go through the bill, and do you have specific recommendations on specific sections that you now want to make to the committee, which perhaps some of us might be encouraged to introduce as amendments to the bill?

Mr. Borovoy: If you will check our brief--I do not know if you have a copy of it there--on page 11 there is a summary of our recommendations and they number 18. In fact there are even some subsections to some of them. So there is a pretty full account of detailed and specific recommendations that we would make for changing the bill.

Mr. Philip: I recognize that. It is just that it was not



in a section-by-section form, and I was wondering whether you had had an opportunity to do it in that manner.

Mr. Borovoy: We never really did it section by section; we did it this way. When I appeared here the last time I did go through all these things. I have not done it in that form, but certainly at the point of clause-by-clause I am sure we could adapt ourselves to that were that to become helpful.

Mr. Philip: The reason I asked that, Mr. Borovoy, is that of all of the various interesting briefs I think yours is probably the most detailed, and it would be useful to this committee if, in clause-by-clause, we had some of your suggestions in that form. I realize that is extra work, and I realize I may be asking you to do some work for the committee; but you have not been beyond that before and it would be useful to the committee if you were able to do that.

Mr. Borovoy: As long as you might understand that the service might be worth what you are paying for it.

Mr. Philip: I have never paid for your service before, and it has always been of high quality.

One of the interesting comments this morning, and one that I was struggling with and still do not completely understand how we go about, is that one of the greatest problems is not only an offence of commission but also an offence of omission. The point was made that some rights of citizens have been damaged more by the police not acting in certain instances, or not acting to the fullest extent of their power, than in actions. The problem then comes as to how could you put that kind of thing in operation under the bill, would it be so unwieldy and so vague; or is it possible to build that kind of complaint into the bill and into the inquiry, and, in fact, how do you assign blame when you have a large bureaucracy in which it may be very difficult to find out why something was not done rather than who did something?

Mr. Borovoy: I would hope that the bill as drafted already contemplates the possibility of complaints being filed for these omissions, as you call them. How one would assign blame, what responsibility to impute to whom, I would think would be a function of the relationship between the facts in any given case and the applicable rules or laws under which the police normally operate.

In other words, I think it may be a risky exercise for the tail to wag the dog; that, within the context of a bill dealing with complaint procedure, to try to deal with all the complexities of the rules by which police are normally governed, when they have a responsibility to do what is really a function of the Police Act, their internal rules, the Criminal Code and a number of other things.

2:20 p.m.

I would hope, however, that the complaints system would be broad enough and flexible enough to include complaints for

derelictions of duty, if we may call them that, as well as for excesses of it, and that what one does in any given case would really be a function of how one applies the rules to the facts that are found.

Mr. Philip: So your understanding is that under the present bill, then, it would be inclusive?

Mr. Borovoy: I see nothing in the bill that would prevent it, though I would always be open to having another look; and certainly if anyone has any view which would indicate that that's incorrect I would like to have an opportunity to respond to it.

Mr. Philip: And would that be Mr. Hilton's understanding?

Mr. Hilton: Our view is that it's covered under the neglect of duty type of complaint, and that that would cover leaving undone those things that we ought to have done.

Mr. Philip: So the example that was given this morning--that is, of a group of people allegedly demonstrating peacefully and being attacked by another group--would be an example of where the police had stood by and allowed these people to be beaten up, as someone suggested this morning may have taken place. That would be covered under that?

Mr. Borovoy: That's my current reading of it. If Mr. Hilton agrees I find myself confirmed--also overjoyed at this unusual agreement between us.

Mr. Philip: I guess it would become more difficult in cases where the police simply showed up late or were slow to respond or took one call over another; that's a value judgement. I can see an awful lot of difficulty in trying to investigate that kind of thing.

Mr. Borovoy: I would think, though, that your same procedures would still apply: that is, a complaint could go forward and an investigation might take place, but whether one finds fault might depend on whether the officer concerned was or was not responding to the guidelines and instructions that had been laid down.

If he were not responding properly to them that might be the basis for disciplinary action; if he were, and it indicated some problem with the instructions themselves, then presumably that might become the subject for a recommendation by the PCC that went more to the structure of police practices than to that specific complaint. I should think that would be the way that kind of matter would be handled.

Mr. Hilton: That would be my understanding, too, Mr. Borovoy, in our new--whatever you called it.

Mr. Borovoy: I'm getting increasingly uncomfortable.

Mr. Philip: I wonder if I can ask you some specifics

about some of the recommendations. Recommendation number 13 provides that in cases of serious misconduct the police complaints board will acquire the power to impose a varying level of suspension without pay. One of the arguments that has been made is that it's important that a police inquiry board of any kind investigate the alleged wrongdoing and come to a conclusion of whether or not there was misconduct, but that in order to have a well-managed police force it is management's role to discipline and to decide on that discipline. If the discipline is inadequate that is a political problem which can be taken care of with management, but management must be the one that at all times makes the decision as to what disciplinary action, if any, will be taken.

I wonder if you would address yourself to that argument in the light of recommendation 13. And I believe that you have similar recommendations running at one or two other points in your brief.

Mr. Borovoy: That recommendation assumed the structure of the bill as it's going forward. We are not wedded to that particular way of doing things. One might argue for a different kind of complaint system where management initiates both the discipline and the penalty and which might be subject to appeal. That is the model that might be used, for example, in the normal management-labour situation where management says, "You have done something wrong and we discharge you," or "We discipline you," and then the person may grieve or appeal to an independent board.

Were you to adopt that kind of system I don't know that we would particularly quarrel with it so long as some of the other things we have been asking for were in place, such as independent investigation and, ultimately, recourse to independent adjudication. However, assuming the structure Bill 68 is currently promoting, then we would say that whatever board is ultimately seized with this kind of jurisdiction it ought also to be able to suspend without pay in addition to the other types of penalties that it has the power to impose.

Mr. Hilton: Just for understanding, Mr. Borovoy, what you are really looking at, then, is section 19(14). Is that correct?

Mr. Borovoy: Yes.

Mr. Hilton: There is a pretty wide power in (a) to (f), including the power to dismiss, to reduce in rank "and in pay in accordance with the rank to which he is reduced; (d) direct that days off not exceeding 20 days be forfeited"--which in essence really is imposing a suspension, because the salary is up to 20 working days--"(e) direct that pay not exceeding five days' pay be forfeited; or (f) reprimand the police officer." What you are seeking is in addition to those penalties.

Mr. Borovoy: That's right.

Mr. Hilton: A further penalty of a suspension for a term of however long.



Mr. Borovoy: That's right, because (d), the one you refer to, is talking about days off. Our difficulty with this is that the span is somewhat rigid. There isn't enough graduation from the rebuke to the discharge, or what we call the employment guillotine. Our view is that there ought to be some opportunity to mete out something more severe than the lesser ones you have here but less severe than discharge.

Mr. Hilton: I just wanted to make sure I understood your submission.

Mr. Philip: Number eight is an interesting one, because it's the most common one I now get as a complaint from citizens who are making complaints. People are willing to accept that something was not done provided they know the reasons why it was not done--or at least they find it easier to accept. Mr. Hilton, I wonder if you can tell me any reason--perhaps I should ask the chief of police when he comes; this would seem to me to be just a normal, common-sense practice. Why is it not followed--

Mr. Hilton: Pardon me, I wasn't with you there. Are you talking about 13?

Mr. Philip: No, number eight. Not section 8, recommendation eight.

Mr. Hilton: I would prefer that you ask the chief that, because I would only be guessing at an answer.

Mr. Philip: It's a matter that I believe was also addressed in Mr. Batchelor's presentation before the committee, and it's one that I know he has talked to me about on a number of occasions.

Since we have only an hour I will allow other people to question. Perhaps I may have a couple of questions later.

2:30 p.m.

Mr. Williams: There is a section dealing with the integrity of the system, as you call it, improving the integrity of the system, in which I am not really convinced by the argument you put forward, Mr. Borovoy, and that is your suggestion to the committee that the commissioner be removed from his position as chairman and that he be charged with the responsibility for initiating and acting on behalf of the complainants before that very board, so that he should remain at the administrative level rather than at the adjudicative level.

I can see some legitimacy to what you are saying from the direction you are coming from. Yet is there any other person who would be better informed on the whole matter since its inception than the commissioner? If not, wouldn't it indeed be preferable that he remain in that position as the senior person on that board, being so well versed in the matters, more so than perhaps anyone else?

The other consideration that I would like you to respond to

is with regard to the suggestion that somehow it would be inconceivable that a complainant would have to have carriage of the action before the board and, in so doing, incur lost time and perhaps some expense as well. Given that this is normal practice when citizens appear before any board or commission, what is so different here?

In this instance, I presume, it would have carriage of the matter paid for by the state. This is what I presume you are implying.

Mr. Borovoy: I was assuming from my reading of the bill that the the complaints commissioner would have carriage of the complaint. I'm not sure that it would be quite accurate to say that he was acting on behalf of the complainant, but I would have assumed, in the absence of anything explicitly to the contrary, that he would be the one who would actually be carrying the complaint forward before hearings of the board.

There are other precedents for this in our administrative practice in Ontario. You have something quite comparable to this in cases where the human rights commission is concerned. A complaint would go to the human rights commission and be investigated by the commission and some attempt would be made at conciliation. Then, in the event that it was not satisfied that it could settle the matter and it was satisfied there was discrimination, it could appoint a board of inquiry independent of the commission, and the commission would carry the complaint forward before a hearing of the board of inquiry.

The complainant could still appear by his own counsel if he chose to do so; otherwise he would just depend on the commission to carry the complaint forward on his behalf. I would think probably the reason for that is that in so many of these cases you are talking about relatively disadvantaged people, and to have them carrying these complaints forward with counsel at the hearing, where that was the only way to do it, I should think might impose a tremendous burden on people who normally would find it very difficult to carry such burdens.

Mr. Williams: Can I just ask one question? From where do you draw the conclusion that we assume people who would be bringing a complaint before the board would be disadvantaged persons? Could you elaborate on that?

Mr. Borovoy: I'm not assuming, of course, that all of them would be, but I would suggest that a very great number of people who wind up in conflict with the police are in such categories.

Mr. Williams: They are disadvantaged in what sense?

Mr. Borovoy: Economically; they may be members of racial minorities; they may be members of some unpopular or not overly acceptable groups in the community--that kind of thing. As a result they wouldn't have the kind of resources that many other sectors of society would have. I would suggest that a very large number of those who have grievances with the police would fall

into categories of that kind. Certainly it's not invariable.

I would have assumed that in the absence of anything else as I read the bill; it makes no explicit mention of who is to carry the complaint. I had simply assumed that it was the complaints commissioner. If some other intent were there I should think the bill would have specifically said so.

Mr. Williams: So you envisage the situation where he in fact would be almost the prosecutor in the case on behalf of the complainant before the board rather than sitting in judgement--

Mr. Borovoy: That's right.

Mr. Williams: --to the point where the complainant may not even have to testify before the board as such but simply have the commissioner be his or her spokesman.

Mr. Borovoy: I can't imagine that the complainant wouldn't have to testify, because, of course, you'd be dealing almost entirely with hearsay evidence unless the complainant were to testify.

Mr. Williams: I presume you would have that option, of course, but in all likelihood he would want to testify.

Mr. Borovoy: With whatever consequences might flow from his failure to do so. But I would think that the planning, the selection of witnesses, the conduct of the procedure would probably fall to the public complaints commissioner. That being the case, I think you would have an appearance of impropriety--and, indeed, to the police officer to a very great extent.

If the PCC were the chairman of the very board before whom he is conducting this matter and if he could select who the panel is going to be in any given case, wouldn't that be open to the appearance that he might select those people who would be most sympathetic to his view of the case? This is not to suggest, of course, that any of the personalities so far chosen would consciously do that; it is to suggest that this kind of structural arrangement, I think, would create that appearance, that suspicion, if you like.

Mr. Williams: I see. An interesting point there.

Mr. Hilton: Further in answer to that: Mr. Linden and I have discussed just the point that is now being raised, and it's his current thinking that there would have to be board counsel who would do all those things if he could not be chairman, and that PCC counsel would be the person who would assist.

Now, it's a troublesome thing, and all I can say to you is it's a matter of concern right now how it would best be done and appear to be fairly done.

Mr. Borovoy: I was going to say that, though it's less bad, I don't think it is adequate for him to name counsel, because



counsel would then be taking his instructions from him.

Mr. Williams: It would be far better for him to have his own counsel.

Mr. Hilton: It's not really in the sense of instructing counsel; it's just that there be independent counsel obtained to do those things--

Mr. Borovoy: Then I think, you see, your difficulty would be, on whose behalf would counsel be acting?

Mr. Hilton: That's correct.

Mr. Borovoy: Who would be instructing counsel? I think that's the difficulty you have.

Mr. Hilton: But in any event we are aware of it and we're seeking to struggle with it, to work out at least a--

Mr. Borovoy: The only suggestion I make, then, in view of the current structure--if the structure were to change somewhat, of course, a different recommendation might be forthcoming--is that the PCC instruct counsel, that he have the ultimate responsibility for carriage of a complaint before the board, but that he be divorced completely from the board, that he not be an adjudicator, that he not be the one to select who the adjudicators are.

Mr. Hilton: That's an alternative way of handling it, and this has to be evolved.

Mr. Borovoy: As I suggest, if you were to come up with a somewhat different structure our recommendation might be different; but assuming the way it is now that's the recommendation we would make.

2:40 p.m.

Mr. Williams: Certainly from a perceptual point of view I would be inclined to agree it would be far preferable, although more costly to the complainant, to have that option of selecting their own counsel, rather than having counsel appointed for them, even though that may be done in cases of the state carrying that cost.

Mr. Borovoy: I do not know that we have an either/or proposition. The complainant may well have his own counsel because there might be situations where even though the PCC has determined there ought to be a hearing, there may not be a complete harmony of interest between the PCC and the complainant. So conceivably the complainant may well have need for counsel of his own even though he is not the one who is ultimately charged with the responsibility of pursuing the matter before the board.

Mr. Williams: Yes. I understand that. Okay.

Mr. Hilton: It is a similar setup to the Highway

Transport Board or the National Energy Board where the proponents, either for or the opponents have their own counsel and the board may have counsel. It does nothing more than see that all the evidence is brought forward.

Mr. Borovoy: It has happened before. With boards of inquiry, under the human rights commission as well, the complainant will go there with his own counsel even though commission has counsel.

Mr. Chairman: Thank you.

Mr. Hilton: May I just straighten something out. A while ago there was a comment made about recommendation eight of your brief, that is, "provided the chief of police must furnish written reasons for any disposition that he makes of a complaint that will not involve a subsequent hearing."

I would refer you to section 10, sir. I must say I missed it and John Ritchie pointed it out to me that subsection 1 says, "The chief of police shall review a final investigation report and may order such further investigation as he considers advisable and may, unless he decides that no action is warranted..." and then (a), (b) and (c) are hearing situations, (d) is not all that important. But then subsection 3: "The chief of police shall give forthwith written notice of any action taken by him under subsection 1 or of his decision that no action is warranted to the PCC, the person who make the complaint and the police officer concerned and, where his decision is that no action is warranted, he shall give his reasons therefor."

Does that cover the situation?

Mr. Borovoy: No, it does not. Our remarks were addressed to (d).

Mr. Hilton: To (d)?

Mr. Borovoy: We quite well understand that if he decides no action should be taken, he has to furnish written reasons. If he decides, however, on what one might call the ultimate in mild action, a rebuke or a caution, he does not have to explain that. Our view was that he ought to be required to explain whenever a hearing is not forthcoming so that, specifically for the purposes of this bill, would be (d).

Mr. Hilton: I see.

Mr. Chairman: Thank you. Mr. MacQuarrie.

Mr. MacQuarrie: Going back to this administrative dilemma for a moment.

Mr. Borovoy: I am sorry--going back to which?

Mr. MacQuarrie: This administrative dilemma about the separation of the tribunal as such and the PCC. I was wondering from the point of view of representation whether if provision were

made for the appointment by the Solicitor General of counsel to carry a complaint before the tribunal, as opposed to the PCC appointing counsel, that would solve the problem.

Mr. Borovoy: I would be a little concerned about it even there because the PCC is the one who has determined--

Mr. MacQuarrie: That the hearing be held.

Mr. Borovoy: --that the hearing be held. That is on the basis of a view he must already have taken of the facts.

Mr. MacQuarrie: That is right.

Mr. Borovoy: Since that is the case, then your difficulty is that those who are adjudicating may then appear to have been influenced by his judgement that he takes a rather dim view of the police officer's behaviour in this matter. I do not know if that is going to get you out of that problem.

Mr. MacQuarrie: I was looking at some tribunals and there ordinarily is a measure of separation. Take the director of investigation and research, the Combines Act, and the Restrictive Trade Practices Commission on the other hand. In respect of an individual complainant, the director takes over the prosecution of the matter before the tribunal and acts in a sense as crown counsel or a crown attorney in the criminal courts, acting on behalf of the public interest, as reflected in the individual complainant.

Mr. Breithaupt: Do you think there would be a problem in delay as far as any appointment might be concerned, or is that a practical problem?

Mr. MacQuarrie: I was just wondering. I am just tossing this out from--

Mr. Breithaupt: Any delay in appointment? I am just wondering. It is just a point. It may not be of great concern.

Mr. MacQuarrie: It raises a very interesting point, which I think they do look into certainly.

But one question I would like to ask, and this departs from the list of recommendations somewhat. I notice in the first page of this brief, or another brief which was prepared with your name appearing on the front cover, that you felt the present bill represents an improvement over the status quo. A number of delegations have suggested it be far preferable to hoist the bill or turn it down; that or the status quo. So I take it that is not your view at all.

Mr. Borovoy: No, it is not. Some independent civilian involvement is less bad than no independent civilian involvement. Our point is that it is nevertheless highly inadequate independent civilian involvement. But certainly it is less bad than the completely internal system that exists now.



You will note that I am using terms like "less bad" rather than "better."

Mr. Williams: Mr. Borovoy, you are giving the deputy indigestion here.

Mr. MacQuarrie: I am following the language without too much trouble. Then, I take it, you disagree with those other delegations that say--

Mr. Philip: I am sure Mr. Borovoy is providing more heat to the government than any radiators have ever provided.

Mr. Borovoy: I was going to say that it is generated from the light.

Mr. Wrye: Mr. Borovoy, I just want to get your thoughts on what is really the key area, and that is the matter of who does the investigating. As you know, the government's suggestion in setting up this legislation and, indeed, the defence of it offered by the Solicitor General, is based upon a view that a number of people, including Arthur Maloney and Mr. Justice Morand, have all said that the police should undertake the initial investigation themselves.

I would just like to get your thoughts about the reports that Arthur Maloney and Mr. Justice Morand, and even the McDonald commission wrote. I am not really too sure why you have come up with an entirely different conclusion than these very eminent gentlemen. Maybe you can enlighten me a little bit. Perhaps you know these people a little better than I.

Mr. Borovoy: I would not want this, of course, to degenerate into a conflict of eminences. But if I may put it this way, I am less impressed with what some of those commissions have said than I am with what they did. If one takes the two commissions, Morand and McDonald, which actually were involved in investigating civilian complaints against the police, I find it rather significant that they chose outside investigators. They did not rely on the police to do their own investigation. That is in the case of both the McDonald commission and of the Morand commission.

I would submit that their own experience is a more reliable guide and this may be a case where they were saying to us, "Do what I say, not what I do." With respect, I am more influenced by what they did than by what they said.

2:50 p.m.

Incidentally I think their own experience provides also an argument against so many of the remarks that we have seen from so many of the critics of the critics of the government's approach that it is unworkable, that it can't work, it won't work. Then they in turn point up the recommendations made by these commissions, and yet, the very experience those commissions have had demonstrates that it can work because in their cases it did work. I suggest that is an awfully persuasive argument.

Then the rest of the argument really boils down to the whole question of trying to establish a system that can strike a better balance than the present one or the one being proposed for inspiring public confidence and, I might even add, ultimately police confidence in the way these things are going to be handled. Because I think your difficulty is that as long as you have internal investigators handling these matters, what we must face is that they are put in a conflict of interest position.

On the one hand they are called upon to do a scrupulous investigation of facts; on the other hand they have a departmental interest in making the department look good. So, no matter how fair a particular investigation may be in fact, it cannot help but suffer from the appearance of unfairness which is generated from the simple fact that those doing it are beset by a conflict of interest. I submit it is really as simple as that, and I say as simple and as profound as that simultaneously.

Mr. Hilton: May I just in supplementary to that ask Mr. Borovoy if he likens the minor complaints we may receive to those matters that were before those commissions which were royal commissions?

Mr. Borovoy: I'm sorry, I am having some difficulty hearing you.

Mr. Hilton: I'm sorry. The royal commissions to which we have made reference, such as Morand, Marin, Maloney and the--

Mr. Borovoy: Basically it was Morand and McDonald.

Mr. Hilton: All right, take McDonald. I don't think you are inferring that the types of complaints that would come before the PCC or anybody in this bill are the same broad types of complaints that are being dealt with by these royal commissions.

Mr. Borovoy: As a matter of fact I suppose there are two responses to that. First, a good number of them are. If you will recall the Morand commission, a number of complaints had been gathered by a newspaper reporter. The McDonald commission, the ones that were publicized appeared to be of a very special type. Of course they weren't initiated by citizen complainants. The citizens had no idea what was happening in a great many cases.

Mr. Breithaupt: They did not know who burned the barn.

Mr. Borovoy: They didn't know. But there were numbers of other things, if you will recall, the McDonald commission investigated. For some time they were involved in processing complaints that came forward from individual citizens.

Indeed, if you read the McDonald commission report they specifically said in their report that they were doing a lot of these things, but at one point--I think we quoted this--they had a cutoff date and they noticed after their cutoff date a lot of the people who had complaints didn't want to go to the Solicitor General or the commissioner of the RCMP. Until that point the McDonald commission was handling these things separately.

Mr. Breithaupt: People were coming forth at that point.

Mr. Borovoy: People were coming forward and, as they say, it dried up when their cutoff date was announced.

Mr. Hilton: In any event, we would hope that reports and resolution would come much more quickly than the report from the McDonald commission.

Mr. Borovoy: There is at least a consensus on that score.

Mr. Hilton: Those who did investigate in the McDonald--

Mr. Borovoy: I'm sorry. I remember I said there were two things. One is that I didn't think the facts really supported that suggestion. The other also is that, as a matter of principle, I find it difficult to distinguish why one type of complaint must be handled one way and another kind of complaint must be handled another way. I don't really think there is any logical reason to make that distinction.

Mr. Breithaupt: There is no difficulty in seeing any difference in the quality of the complaint?

Mr. Borovoy: There are all kinds of complaints that come to the police department, there are very trivial and there are very major, and they have to handle all of them. How can one say that the McDonald commission or the Morand commission were handling matters that were sui generis? I just don't think that is--

Mr. Hilton: On the other hand, you do not disagree, sir, with the statement that the McDonald commission recommends that the police--what you are saying, "Do as I say, not as I do."

Mr. Borovoy: I'm sorry?

Mr. Hilton: What you have said is what the McDonald commission report says, "Do as I say, not as I do."

Mr. Borovoy: I am saying that I find what they did more persuasive than what they said.

Mr. Hilton: Yes, but the upshot of their report is what they said.

Mr. Borovoy: I suppose as Bill Bennett was accusing Trudeau of being selective, I would suggest that response is needlessly selective when one looks at the totality of the experience.

Mr. Hilton: In regard to some of your remarks, are you aware for instance--and it doesn't involve the Toronto police--that within this week as a result of an Ontario Provincial Police investigation, seven OPP officers are facing a dozen criminal charges in the north?

Mr. Borovoy: Of what kind?



Mr. Hilton: Oh, I am advised that some are Elliot Lake and some are OPP. It's divided between them, but still it is police against police and OPP are charging some OPP officers.

Mr. Borovoy: What kind of matters are we talking about?

Mr. Hilton: We are talking about criminal offences.

Mr. Borovoy: Were those matters that arose in conflicts between the police and suspects that the police were attempting to nail?

I don't think it has ever been in question that the police have often done a scrupulously good and effective job where they suspected police officers of being involved in general criminal activity. I think the problem we have is where you have a conflict between the police and some of the people against whom the police are involved in conflict, and it's in those situations that the public perception of police vigour commands somewhat less confidence.

Mr. Breithaupt: Stolen goods is something separate from brutality.

Mr. Borovoy: That's right, stolen goods. A police officer might be suspected of being involved in a fraud, theft or something like that and that is one thing. That is where I would expect the most vigorous police action, but where the matter arises between a suspect and the police, where the police force generally wants to nail that suspect, then what we are concerned about is to what extent do we get that same vigour where the police overstep the line in trying to nail that suspect. I suggest to you that is where we have a lot of these kinds of problems.

Mr. Wrye: I gathered in answer to Mr. MacQuarrie's question you feel none the less that, even failing any amendments, Bill 68 is an improvement on the present system. If you were in my shoes and all was said and done and we hadn't changed a comma in this piece of legislation, you would still be inclined to say that's an improvement and support it on that basis.

3 p.m.

Mr. Borovoy: I am tempted to respond to that the way a senior and very wise colleague of mine often responds to these kinds of questions. He says, "Don't try to put me on the horns of a nonexistent dilemma." It is well within the purview of this committee, as I understand the parliamentary system, to make the necessary changes. How one--

Mr. Wrye: That theory is fine, but there has been some talk of the realities of March 19, which may reduce it to theory alone.

Mr. Borovoy: Perhaps, should that unhappy day arrive, if this committee has proved as politically impotent as that remark suggests, we might then have a consultation and perhaps the advice then will be more realistically solicited. In the meantime might I

suggest that every effort be made to make the appropriate changes.

Mr. Wrye: I assure you, every effort will be made. Beyond the area of the civilian investigation or the independent investigation, we had some suggestion yesterday from one of our witnesses from the Criminal Lawyers' Association that he rather liked some of the protections which are given the police in this legislation, not all of them, and I will try to remember a couple of them--perhaps some of the other members of committee can help me--because it allowed the legislation to assure the policemen that they were bending over backwards to be fair to them as well. He urged the committee to leave a couple of the matters in.

Perhaps Mr. Elston can--

Mr. MacQuarrie: I think one of them was burden of proof.

Mr. Wrye: One of them was about using the admissibility of earlier statements with the officer if the board was forced to convene. He felt--

Mr. Breithaupt: It jeopardized the officer.

Mr. Wrye: Yes. He felt that provision should stay. What protections to the police do you think ought to remain in this bill, given that a lot of witnesses have suggested a lot of them be taken out?

Mr. Borovoy: I don't know how many of them I have committed to memory. I could probably more effectively respond if you indicated which ones. The one you mentioned a moment ago I do not agree with. Paradoxically, I would give the police some protections in that area that are not in this bill but I would not give them that protection. I don't think it makes sense.

If a police officer is required under threat of discipline to make statements in response to a complaint I think it is sensible that those statements be usable and admissible in the employment disciplinary context. After all, that is the purpose of asking these questions and I think what we must always remember is that we are talking about holding a position of public trust. That really must underline this whole procedure.

However, if they are required to make such statements under threat of discipline, I don't think such statements ought to be usable against them in criminal prosecutions.

Mr. Breithaupt: So it is externally?

Mr. Borovoy: That is right. Outside of this, I don't think it ought to be usable and that is one protection I would give to police officers over and above what normal citizens have, because if you and I are threatened with discipline if we don't talk and we talk the statements could be used against us in criminal prosecutions, but because police officers are uniquely vulnerable to that kind of accusation I think it is fair that they have an additional protection in the context of criminal prosecutions where jail is the consequence, but not in the context

of employment discipline that goes to their right to hold a position of public trust. I don't think that is sensible. I say that with respect to whatever colleagues of mine may have said otherwise.

The problem with what I am suggesting is I don't know that the provincial Legislature has the constitutional competence to affect the admissibility rules in criminal prosecutions, but it would be one that I think you ought to attempt to persuade the federal authorities to change. I think that would be an eminently fair thing to do.

Mr. Hilton: I take it, then, you agree with the situation, Mr. Borovoy, that if a person was required to give an answer as an officer, subject to discipline procedures if he didn't, that that could not be used in a criminal trial against him, that it wouldn't be admissible evidence.

Mr. Borovoy: I am saying it ought not to be admissible.

Mr. Hilton: Well, it isn't, is it?

Mr. Borovoy: Yes, it is.

Mr. Hilton: Under which code of evidence?

Mr. Borovoy: As I would understand it, if a police officer is asked questions in the course of an employment investigation, whatever he says could be used against him. What would keep that out?

Mr. Hilton: If he is obliged to do so, having disciplinary sanctions held over his head, I submit that no court would allow you to use them.

Mr. Borovoy: On what basis?

Mr. Hilton: Because they are not free and voluntary admissions.

Mr. Borovoy: Well, that is a nice question of whether or not that would be considered free, whether that would be a voluntary admission for those purposes.

Mr. Hilton: I don't think so.

Mr. Borovoy: Suppose a person said that to his employment supervisor in a nonpolice context: Would it be usable if he were threatened with discipline? The answer is probably it would be usable.

Mr. Hilton: I think it would be but we are talking about a police context.

Mr. Breithaupt: I don't think the Criminal Code makes that a distinction.

Mr. Borovoy: But isn't that your problem? It may be a



more arguable question, but in the context of an investigation where employment is the sanction, is that what our rule with respect to voluntary statement contemplates? Or does it not contemplate some things going to criminal sanctions or perhaps even physical coercion or inducements relating to criminal sanctions?

Isn't that the way our rule with respect to voluntary statements arose? That it was in the context where you may face criminal sanctions if you don't speak up that the rule developed that those statements were not voluntary? I am not as clear that that applies where it is only employment sanctions that are being threatened. I am not denying it, necessarily. I suggest it may be a more arguable question than you are suggesting.

Mr. Hilton: I certainly think it is very arguable. I agree with you on that.

Mr. Wrye: Thank you, Mr. Chairman, those are my questions.

Mr. Chairman: Thank you, Mr. Borovoy. Thank you not only for the first time but for your return trip and in assisting us today.

Mr. Borovoy: Excuse me, Mr. Chairman, if I may just add one note as a matter of privilege. I noticed, when I very quickly read the police department's brief this morning, that there was some suggestion in their brief they must have made it without having heard--

Mr. Breithaupt: (Inaudible).

Mr. Borovoy: No, I am talking about the police department. They must have been responding to our written word and not to some of the oral testimony. They indicated that we were casting some sort of aspersions on the public complaints commissioner, the actual person, because of our remarks concerning his inability to spot inadequacies in any complaint investigation.

I would really like to make the point as strongly as I can that in our organization we have nothing but the utmost respect both for Mr. Linden's integrity and for his ability. Our point was simply that, respecting his integrity and ability as we do, it is his clairvoyance that we have some problems about. That is what we are afraid the bill requires, not ability and integrity.

Mr. Chairman: Thank you very much for complete clarification of that.

Mr. Hilton: We bought him a crystal ball.

3:10 p.m.

Mr. Borovoy: I will have to change my mind then.

Mr. Philip: Since the majority of the members are here at the moment, Mr. Chairman, I would like to say it has been

brought to our attention by a number of groups who have appeared before us about the problems in the public's mind with certain statements by Judge Philip Givens. In light of these comments, and those provided to us yesterday, may I suggest that he be invited to appear before this committee? I guess Wednesday morning would be open, wouldn't it?

Mr. Chairman: Mr. Philip, obviously the schedule is set up to start clause by clause on Wednesday morning. That is what the schedule calls for. It is, of course, the committee's pleasure as to who comes before it. What is your pleasure?

Mr. Breithaupt: I can only presume from the time that is available to us that we may likely be continuing, on Wednesdays, for several weeks once the House comes back. I doubt if we can complete the work fully by the end of next week. If that is the case, I would think having one more person, unless he could be fitted in at some other time, is not unreasonable.

I certainly have no objection, because obviously Judge Givens is in a particular position of authority and responsibility, and may well have views that would be helpful to the committee as to how he sees the situation as it develops. I certainly have no objection to inviting him.

Is there another time that it might be practical? I notice that next Monday morning, Chairman Paul Godfrey of Metropolitan Toronto will be here at 10 o'clock. Could we perhaps find out if he would be likely to take the full time? If not, perhaps at 11:30, or something like that, Judge Givens could be invited to attend, and we would resolve the whole thing.

Mr. MacQuarrie: It was my understanding with respect to Judge Givens and the statements attributed to him that we were to get copies of that material to get some appreciation of that.

Mr. Williams: That was my understanding; that simply any statements that had been deemed to have some apparent bias in them, attributed to Mr. Givens, would be filed before the committee so that we could examine those statements before we decide whether it is necessary to go to the point of inviting him to come before the committee.

Mr. Chairman: I am advised by the clerk that he has contacted Judge Givens' office, and they do not keep such statements on file. Alderman White's office was attempting to find the press clippings. So I could assume at this point, for the sake of argument, they are not available.

Mr. Breithaupt: If that is the case, I would rather rely on Judge Givens' being in front of us than necessarily basing it on a number of press clippings, if there is not a statement.

Mr. Williams: As -I recall from the evidence that was given, the only point raised was with regard to a statement that he had made pertaining to the hearings that were conducted with regard to the Globe and Mail exposé, that it was related to that one incident. The only other statement that was raised was one

read out by Mr. Philip to Mr. White in the committee the other day, which was a non sequitur type of thing and was really of no consequence as far as Mr. Givens having views on this matter. It really reduced itself down to the one statement.

Mr. Philip: I think if Mr. Williams would check some of the exhibits that have been handed out, one of the groups--and there is no exhibit number on this, but it is called a Summary of Policing Problems in Metropolitan Toronto, March 1979 to March 1980.

Mr. Chairman: That is exhibit 17, Mr. Philip.

Mr. Philip: Exhibit 17 contains a number of statements, also by Judge Givens, that I found to be highly inflammatory.

I think Mr. Breithaupt makes a good point. Whether or not there were such statements that we wanted to question him on, the mere fact that he is in an important position and will have a great influence on how this bill, in whatever form, is implemented, certainly is sufficient reason to bring him in and to find out his views, because there is considerable concern in the community about certain opinions which he has expressed or possibly certain biases which he may hold.

Mr. Laughren: What it is coming down to is, whether or not he ever made a statement, the committee would like to have him share his wisdom with us.

Mr. Kennedy: Briefly, what are the details? What is he alleged to have said?

Mr. Philip: I read a number of them the other day. There are a few others here.

Mr. Kennedy: You have the advantage.

Mr. Philip: Do you really want me to catalogue them all just now?

Mr. Kennedy: No, but in general, is he alleged to have said something or reported as having said something that casts some cloud over the whole thing?

Mr. Wrye: He is alleged to have said, for example, right on the first page, "Racist Comments No Cause For Firing Policeman."

Interjection: That was a headline.

Mr. Chairman: There was a Globe headline: "Givens says Caravan should have ignored Palestinian representation. They should have told them to go soak their heads." That is hardly the kind of comment that you expect from the chief commissioner.

Mr. Breithaupt: That is a reasonable comment from Phil Givens, I think.



Mr. MacQuarrie: That type of comment, so far as the committee is concerned, is clearly irrelevant.

Mr. Philip: The comments of politicians are in a different category to those in that kind of position, I suggest, just as the comments of a deputy minister are different to those of a politician. One expects politicians to be fairly blunt and give political points of view. One does not expect someone in a trust that amounts to a high public office to use those kinds of statements. But I would rather ask him about them rather than catalogue more of them.

Mr. MacQuarrie: The thing is, really, that we are here to discuss the substance of the bill. Certainly the comments attributed to Judge Givens with respect to charges of public mischief being laid against complainants--and I think you read that yourself, if I recall correctly--might have some bearing on some of the material submitted. But I thought we were going to get copies of all of this material before we decided to invite Judge Givens to appear.

Mr. Philip: And since there are no copies available?

Mr. MacQuarrie: This material that you referred to in exhibit 17, looking through it quickly and with a view to Judge Givens' comments, I don't see anything that particularly pertains to the bill under review.

Mr. Williams: I really think the balance that can be brought to this has perhaps been best expressed by Mr. Breithaupt. We have certain time constraints on this matter. We are going to be in the clause by clause for some period of time.

I am perhaps a little more optimistic. I would hope we would be able to report it to the House when we go into session, but maybe it will not be reported until the winter session. We never know which way it will go; it might be somewhere down the middle.

It would be desirable, certainly, to try to conclude hearing from the public-at-large witnesses by the prescribed date. I agree that to have Mr. Godfrey here for the whole morning may be an abuse of his time. I think he could say what has to be said in the first hour, although we might be inclined to want to question him for the rest of the morning.

If we didn't extend the number of days for witnesses because I think we have pretty well exhausted the useful testimony that has come with the list of witnesses we have lined up. I don't think Mr. Givens' testimony is critical to our hearings, but if there is time available for him to come in within our time frame to make comments, I would have no objections to that myself.

3:20 p.m.

Mr. Breithaupt: I think Mr. Williams makes a good point. After all, one might say that there are four major players in how this system is going to work beside the commissioner, and those

are the chairman of Metro Toronto, the mayor of Toronto, the chief of police and the chairman of the police commission.

These four people are particularly involved in this theme. We are hearing from the other three; I think the opportunity would be worthwhile to have the chairman of the police commission present. Might I suggest that we invite Judge Givens to be with us at 11:30 on Monday. I think that would be a useful division of time, and then we can get on on Wednesday with what we had planned to do.

Mr. Philip: I will accept that amendment to what was my motion.

Mr. Chairman: Was it a motion?

Mr. Williams: I do not think we need a motion.

Mr. Chairman: That is a consensus then? Thank you. The clerk will contact Judge Givens in that regard.

Gentlemen, we are carrying on well into the time of the next witnesses.

Mr. Philip: Norm Sterling is back, is he?

Mr. Chairman: Norm Sterling is what did you say?

Mr. Philip: Not Norm, Tom what's his name? Never mind, Mr. Chairman. Tom Stelling is back and available in case we need him.

Mr. Breithaupt: Oh, to bring him in. I see.

Mr. Chairman: We have three people from the Metropolitan Toronto Committee on Race Relations and Policing. Messrs. Haile-Michael, Frerichs and Dharmalingam, would you please come forward? Members of the committee might refer to exhibit 12 as their brief. Are all three of you speaking?

Mr. Dharmalingam: I am going to read the statement, Mr. Chairman.

Mr. Chairman: Would you identify yourself, please?

Mr. Dharmalingam: My name is Dharmalingam. I am the chairman of the Metropolitan Toronto Committee on Race Relations and Policing. Next to me is Reverend Eilert Frerichs, who is a member of the committee. Yonas Haile-Michael is executive secretary of the committee.

The Metropolitan Toronto Committee on Race Relations and Policing is pleased to have been invited to make a presentation to your committee on the subject of Bill 68, the Metropolitan Police Force Complaints Project Act, 1981.

Our committee has been in existence for some five years now, and our overall objective is to determine the concerns of the

visible minorities and law enforcement agencies in Metro Toronto around policing issues and to assess ways of promoting effective communication between them.

We believe our committee is a unique experiment, in that we are a working partnership of community groups and agencies, the police, the Metropolitan Toronto government and the Attorney General's and the Solicitor General's departments. We recommend policies and engage in activities which will enhance the relations between law enforcement agencies and visible minorities at all levels.

Police-community relations in Metro. To put our comments on Bill 68 in some perspective, we should like first of all to characterize briefly our perception of police-community relations in Metropolitan Toronto.

The Metropolitan Toronto community in recent years has undergone a set of social, economic and cultural changes that have transformed the face of our city. Not only has the physical image of the city changed, but so have long-held traditions and social relations. New groups of people seek to establish themselves in Toronto; they are here and now seek access to the same benefits and privileges other cultural groups have enjoyed for a long time.

New forms of community life have come with many of these new cultural and ethnic groups. The distinction between public and private space often gets obliterated today. As a result, there is a much more open and public street life than ever before. In addition, there is a well-known array of contemporary social problems with respect to changing forms of family life, a serious lack of recreational facilities that are affordable to all members of the community, rising crime rates and ever-shrinking resources for traditional or newer human service agencies.

All of this has meant ever-increasing demands being placed on the police services of Metropolitan Toronto. The police are no longer merely a law enforcement agency; they have become rather an important part of the human services system in Metro. The peacekeeping, or order maintenance, function of the police has become an increasingly important part of their duties, something the police have been reluctant to accept and respond to, and something the public at large, as well, has been rather slow to understand and accept.

A particular problem in Metropolitan Toronto has been a very unhappy relationship between the police and some members of the visible minority groups. Visible minority groups have been consistently complaining about persistent police insensitivity to their needs and their lifestyle, as well as racial harassment by the police. It should be acknowledged, however, that the police have taken important steps to improve their relations with the visible minority groups. It is, however, another question whether these steps have an impact at the level of the individual officer on the street.

Particularly irksome has been the feeling in the community that it is impossible to obtain satisfaction against real or



perceived racial harassment or mistreatment by the police. Some people are frustrated because they have come to believe that it is useless to lodge a complaint against a member of the Metro Toronto police force. This belief has arisen because:

1. Some segments of the community feel the fact that investigations of complaints against the police have been conducted internally within the police department has prohibited their effective resolution.

2. Another major problem has been that people, by and large, are quite ignorant of what proper police procedures are, what the regulations are under which police officers are required to work. Greater public awareness of what policing is about is crucial, and the police are the only ones who can provide the information. The police, as a matter of course, should be expected to inform people why they are being stopped on the street or why they are required to provide identification, for instance.

This kind of information, given courteously by a police officer, could eliminate a lot of bad feelings and hostility. Similarly, most persons do not know what to expect when they are arrested or what to expect at the police station, what their rights are and what the rights and duties of the police are. What are appropriate procedures for questioning a suspect, for instance? This kind of information must go hand in hand with a new public complaints procedure. Otherwise one might find a lot of complaints that turn out to be frivolous, or people may assume that they have no reason to complain.

3. The existing complaints procedure has not been readily available or accessible to members of the public. In fact it takes a lot of initiative and anger to lodge a complaint against any public official or bureaucracy, whether this be a supermarket manager or the police. People, by and large, are willing to give others the benefit of the doubt and will put up with a lot, especially when they are kept ignorant about appropriate procedures and when proper channels for complaints are not readily accessible. This is especially true when the complaint is directed against someone in authority, such as a police officer, who could cause even more trouble for the complainant. But resentment does build up, and eventually ends up in deep mistrust of the entire institution.

That, it seems to us, is a stage we have reached in Metropolitan Toronto with respect to the police. Too many people, rightly or wrongly, have come to believe that the police are a law unto themselves and that it is virtually impossible to get a fair investigation of complaints under the current procedures.

If properly administered and with some changes, the bill can go a long way toward improving police-community relations. For a significant segment of the Metropolitan Toronto community, including some members of our committee, the bill clearly does not go far enough. This bill, however, may bring a much needed openness to the complaints procedure.

In addition, the bill provides for a form of supervision and

review for the internal complaints investigation mechanism, and this review and supervision is to be made public. That is all to the good. Further, both the public complaints commissioner and the complainant are to receive a copy of the final police investigation report. The public complaints commissioner, if needed, can cause further investigations to be made if he is not satisfied with the final report.

But we would remind the committee of the old adage that justice must not only be done, it must also be seen to be done; and that, of course, is the crux of the current debate about Bill 68. The government of Ontario is, in effect, asking the Metropolitan Toronto community to trust the police to be able to investigate themselves. However, as long as the police, or any of the public service, for that matter, are subject to public questioning and review, the community should feel safe. In this sense the public complaints commissioner has a function not unlike that of the Ombudsman.

3:30 p.m.

Our concerns: To make the bill and the proposed procedures under it more effective, a number of things should be done, in our opinion.

1. The complaint procedure must be easily accessible to people who may be afraid of the police, to people who do not trust the police, to people who may not speak English very well. This means that a number of steps should be taken, especially with respect to section 6(1) of the bill.

It should be made possible to lodge a complaint in places other than a police station or the office of the public complaints commissioner. For instance, one should be able to lodge a complaint by telephone, through one's own lawyer, legal aid clinics or community centres and libraries. In other words, complaint forms and the prescribed statement setting out the complaint procedure should be made widely available. In addition, any forms and statements should be available in a variety of languages.

2. We are concerned that under most circumstances the 30-day period for making interim reports referred to in section 9(2) may be too long. It could be possible that an investigation of a complaint could be dragged out unduly and, surely, this would be most unfair either to the complainant or to the police officers concerned.

3. Section 10(1) prescribes that the chief of police shall review a final investigation report and that he may then take various kinds of action. However, we are again concerned that no time limit is placed on this review in the proposed legislation. In the interests of fairness to all parties involved in a complaint, there needs to be a time limit.

4. Section 17 of the bill is potentially one of the most important. It makes it possible for the public complaints commissioner to recommend to various police authorities that a

police practice or procedure should be changed, if the commissioner believes this to be necessary.

We believe that such a recommendation should be made public, since there is no guarantee in the bill that the recommendations of the public complaints commissioner will be accepted or acted upon. If the new open complaint process is to be effective at all, then there must be some assurance that policing practices and procedures are subject to review and change, if necessary.

5. Section 19(4) gives a police officer the right and the opportunity to examine any evidence that will be used at a hearing of the police complaints board. In the interests of fairness, the complainant should have the same right and opportunity.

6. Section 19(17) gives the Metropolitan Board of Police Commissioners the right to pay the legal expenses of a police officer in respect of a hearing conducted by the board of an appeal. This subsection, we believe, potentially puts a citizen at a decided disadvantage, since most people cannot be expected to have access to the same high-priced legal talent as the police commission. We would recommend, therefore, that the public complaints commissioner be empowered to make legal assistance available to a complainant at the expense of the crown.

7. Section 16(3) authorizes the public complaints commissioner to "appoint a person to make any inquiry or investigation he is authorized to make..." if the public complaints commissioner is not satisfied with the final investigation report from the police. We believe that in the interests of fairness, two persons should be appointed by the public complaints commissioner, one of whom would be a civilian and one who should be a member of a police department other than the Metropolitan Toronto police.

8. In conclusion, we wish to raise four concerns which are not covered by the proposed legislation:

(a) A complainant must be given the full protection of the public complaints commissioner against any possible forms of retaliation by the police. This form of protection, however, should not be construed to mean immunity from properly laid, reasonable charges;

(b) A case before the public complaints board should be treated as if it were sub judice. We make this recommendation lest police officers be tried in the press, as it were, and to ensure that the public complaints commissioner is not subject to forms of public pressure;

(c) Hearings before the board should be public;

(d) The bill provides that the act is to be repealed three years after it comes into force. We believe that the entire project should then be evaluated by independent consultants who would then report and make recommendations to the Lieutenant Governor in Council.



That is our brief.

Mr. Chairman: Mr. Hilton.

Mr. Hilton: Under (c), you say hearings of the board should be made public. It would be our position, sir, that under the Statutory Powers Procedure Act, which would govern in this circumstance, hearings must be public. While the act does not say it, another overall act does say it; and it was the intention that these be public under the provisions of the Statutory Powers Procedure Act.

Mr. Dharmalingam: Mr. Chairman, basically when we read that act, we did not get that particular feeling. That is the reason for our proposal.

Mr. Hilton: No, it is not in the act as such, but there is an overall act which covers it. Incidentally, Mr. Linden is a member of your committee, is he not?

Reverend Frerichs: Yes. We did, in fact, discuss some of our concerns with Mr. Linden after this brief was prepared. He is in total agreement with all of the recommendations we are making. He thinks it might even make his job somewhat easier.

Mr. Hilton: I will be glad to check that with him.

Mr. Philip: I want to ask a question of Mr. Hilton, in the light of recommendation 8(b) on page eight. I do not believe that I have heard that recommendation being made before. It has been a problem, our concern and mine, that a police officer not be tried in the press. I am wondering if you have any comment on that suggestion.

Mr. Hilton: I would rather agree with you, sir, but it is very difficult if the hearings are public. Anybody who comes there, physically, to the hearing room and sits in, does have a right to hear. But those who cannot come, by reason of employment or something else, cannot hear, and it may have unfortunate results. It seems to me that you cannot be inconsistent in that regard.

Mr. Philip: So what you are saying--I think I was anticipating where you were headed--is that it is a good suggestion, but it may not be operable.

Mr. Hilton: That is right.

Reverend Frerichs: Mr. Chairman, is there a distinction between straight reporting in the press and, say, editorial comment on a case while it is before the courts? It is that kind of thing which we have in mind, it seems to me.

Mr. Chairman: There are shadings there, which I would think would be a subject of conjecture, of what is reporting and what is editorializing. I see Mr. Breithaupt nodding with that.

Mr. Breithaupt: It is not that I am falling asleep; it is that I agree with you, Mr. Chairman.

Mr. Chairman: Thank you. Mr. Philip, would you continue?

Mr. Philip: Thank you. In your various dealings with various community groups, is it your opinion that the so-called visible minority groups are aware of this bill and understand fully the contents of the bill?

Mr. Dharmalingam: I would not say they are totally aware of it, Mr. Philip. Part of our responsibility is to put out information to the community.

If you ask, "Do the public know of this?" No, not too many people know about this bill or how to discuss it. Part of the responsibility we have is to go to groups and get them to talk about the bill. We hope they will understand and that maybe there will be some questions which we can bring back.

Mr. Philip: Is it your experience that a majority of groups, at least, or the leaders of those groups in the visible minority community are now, at this time, aware of Bill 68 and of the general thrust?

Mr. Dharmalingam: If I use the word "the leaders" in a qualified sense, yes, those people who are knowledgeable about what is happening are aware of the bill.

Mr. Philip: Therefore you would not accept the contention of the Solicitor General that these groups are not knowledgeable of exactly what the bill does.

Reverend Frerichs: I personally would not accept that contention, no. I think that these people have very real concerns about the bill.

Mr. Breithaupt: But following up on those concerns, having had a committee in existence for some five years, do you feel that you have been strongly part of the mechanics which have resulted in Bill 68 which is before us now? Do you feel this bill is, at least, partially a result of your work? Have you been involved and consulted in the creation of this bill which is before us?

Mr. Dharmalingam: Let me answer in two parts. One of them is, yes, we have been in existence for quite some time. Our job has been to provide more information and education. But we have not been part of the mechanics of how the bill was drawn up.

Part of what caught the attention of the various agencies involved in community groups was our concern with the existing police complaints system. It is not working. It came out of that, but we were not part of the mechanics. The newspapers talk about consultation. They use that word in a very loose sense, where no consultation took place.

Mr. Breithaupt: Do you know of anyone who was consulted?

Mr. Dharmalingam: There are certain groups, I was told, who were called after the bill came into effect, to check back with them about what they thought of the bill.

Mr. Philip: I wonder if I could follow up on that because you were really anticipating my question. I do not mind sharing that with you.

Mr. Breithaupt: I will let you ask it.

3:40 p.m.

Mr. Philip: I don't want you to ask three or four supplementaries.

Of the various groups that you have been connected with, do you know of any one group in that visible minority community that has been specifically consulted on this bill or even on the predecessor bills to this by the Solicitor General or by his staff?

Mr. Dharmalingam: If I go by my memory, Mr. Philip, I think one group I can recall, the National Black Coalition, I think it is, was the group which was called in and they had some consultation. I could not speak for the rest of the groups. I belong to another group which we--

Mr. Hilton: That would be the group of doctors and interns?

Mr. Dharmalingam: That is right.

Mr. Philip: If I recall the testimony, and we may like to check Hansard, Dr. Head denied that he was consulted or that his group was consulted.

Mr. Hilton: You are right, he did deny it, sir. And I can tell you I sat in the room when he was consulted.

Mr. Breithaupt: At last we have found one person who was consulted.

Mr. Hilton: Depends on the definition of consultation, I think.

Mr. Philip: We found one person in the visible minority who was consulted and that one person doesn't remember being consulted, so it must have been a tremendous consultation process that went on at that time.

Mr. MacQuarrie: I was going to ask these gentlemen whether or not, in the course of the evolution of this bill and its predecessors, they or anyone they knew of had any discussions with the Solicitor General's department or the present newly appointed public complaints commissioner?

Reverend Frerichs: We certainly did not, Mr. Chairman. Just partly in answer to Mr. Philip's question, last year in February or March, we ran a major conference here in Toronto on



policing and race relations and the Solicitor General and Attorney General was one of the speakers at the event. In the course of his speech he commented extensively about the predecessor to Bill 68 and we are quoting from that speech when we say the government of Ontario is in effect asking the metropolitan community to trust the police to investigate themselves. I think that is a fairly accurate quote from that speech by the Solicitor General.

In terms of our group, the Metropolitan Toronto committee, that is the extent of consultation or discussion that we have had, an address by the minister.

Mr. MacQuarrie: (Inaudible) the department, including Mr. Linden?

Reverend Frerichs: No, not that I am aware of.

Mr. Hilton: Did you not realize that Mr. Linden worked for the ministry in the development of this bill and he sat with you?

Mr. Dharmalingam: I think the role he played was completely different (inaudible). In our committee we have a number of representatives sitting from a variety of institutions so he came in that role to participate and listen to that, but we never had occasion to talk about this bill, either this bill or the predecessor bill we are talking about.

Mr. Philip: If I may continue my questioning, Mr. Chairman, the quotation from Hansard which I attributed to the Solicitor General was not that Mr. Linden had talked to various groups, but he used the word "I" in talking to hundreds. So far we have now found one that you told us, Mr. Head, who doesn't even remember talking to him about it. None the less, we have located one out of those hundreds, so we are at least one step farther in finding some of those hundreds since the Solicitor General or his deputy minister can't seem to find any.

Mr. Breithaupt: One small step.

Reverend Frerichs: Surely that is not consultation, with all due respect.

Interjections.

Mr. Philip: I wonder if I can ask, in your presentation, basically you are saying that after this bill is passed and on the assumption this bill is passed, there will be a great role in informing the community of how they go about filing complaints where that is necessary.

I suggest to you that every group that has come before us from the visible minority group, without exception, has indicated that if the bill is carried through in its present form without independent investigation of the police as we have suggested and as the Liberal Party has also suggested, they simply won't use it because they will not trust that kind of system. I am wondering,

what is the purpose of communicating something if people are not going to use it in the first place?

Mr. Dharmalingam: I think the composition of the committee is such, Mr. Philip, that you could have taken a couple of stands. One is this committee could have come with three components, which is the (inaudible) on race relations, social planning council, a number of community groups, and said, "We don't like the bill." Then the other option open is each of us come around with our own brief presentations.

A third option we opened was that the (inaudible) of the committee is also the police, so we thought we would sit with the police members of our committee to sit and talk about whether we can reach any compromise.

So based on that we are saying we did not go into criticizing or critically looking at the bill or saying if we approve the bill in principle, these are the ways we can look at it, and that is the scenario for this particular presentation.

Mr. Philip: Is what you are saying to me, then, and to members of the committee, if you were here personally in your individual capacity rather than in the capacity of a group of which another group, namely the police, are part of, that you might have a different point of view and that the position you might take would be that the people you are dealing with would have difficulty using the bill in its present form?

Reverend Frerichs: Mr. Chairman, if I may try, I personally find it intolerable that the Metropolitan Toronto police department should think that it is beyond review and beyond outside investigation. I find that intolerable and quite frankly, frightening.

Mr. Kennedy: What evidence do you have that they feel that way?

Reverend Frerichs: Their statements.

Mr. Philip: You were here when they made their statements, surely.

Mr. Kennedy: No.

Mr. Breithaupt: Without having the opportunity of review of the bill.

Reverend Frerichs: Without review.

Interjection.

Reverend Frerichs: I think personally that this bill goes some way towards providing a form of review of the Metropolitan Toronto police department which I personally think is critically needed.

On the other hand, given the attitude of both individual

police officers and the leadership of the police department as I have come to experience it through our committee in the last five years, and through various other engagements I have had with the police in a variety of settings, I don't think that external review of the police department is possible.

I just don't think it is possible. I think these people will stonewall and I have no doubt about that. That is the terrible thing about the Toronto police. At this point there doesn't seem to be anyone in government, at the Ontario level or at the Metropolitan Toronto level who can get beyond that stalling. That is why this bill is the very best we can achieve at the present time.

Mr. Philip: I find your comments interesting, in the light of earlier testimony.

Reverend Frerichs: That is my own personal opinion.

Mr. Philip: Let me just quote back to you earlier testimony that we have had.

Interjections.

Reverend Frerichs: The scenario that I am painting, Mr. Williams, is a hell of a lot more frightening.

Mr. Philip: If you would wait to hear the questions, Mr. Williams, I doubt that you would understand the answers anyway, but perhaps--

Mr. Williams: I understand, Mr. Philip. You make the same point every day, or try to.

Mr. Philip: And the answers always come up the same, that there is no support out there in the community for the bill in the present form.

Mr. Williams: --has been destroyed. You had two very reputable organizations go contrary to what you are trying to elicit from them.

Mr. Philip: What reputable organizations?

Mr. Williams: The very organization you are questioning here now.

Mr. Philip: He hasn't gone contrary to what we have said. He gave a personal viewpoint.

Mr. Williams: He indicated that he feels this is the best route to take under the given circumstances, as did Mr. Borovoy half an hour ago.

Mr. Breithaupt: Neither were consulted and neither are of the view that this is best. They are simply saying we will have to make do.



Mr. Williams: But it is better than the status quo which is what Mr. Philip has been trying to get the other groups to say over the past few days.

Interjections.

Mr. Chairman: Mr. Philip has the floor.

3:50 p.m.

Interjections.

Reverend Frerichs: I don't think members of this committee should fight over what I say. The members of the committee should hear what I say rather than try to interpret what I am saying, Mr. Chairman, with all due respect.

Mr. Chairman: With respect to the members of the committee, I don't think we could stop them from disagreeing with each other, no matter who is in the room.

Mr. Philip: I think Mr. Williams should read what Mr. Borovoy did say, because he didn't say what is attributed to him.

In the light of two other statements: One, that each of the community groups which has come before us has said they wouldn't use it. On the contrary, each of the community groups, with one or two exceptions, perhaps, who weren't asked the question, has suggested that they felt that the police in Metropolitan Toronto, unlike the police in the US, were at a level of maturity where they could accept an independent inquiry.

I suggest to you that every community group that has come before us so far has made that point in one form or another. I don't believe the Communist Party made that point, but then nobody asked that question of the Communist Party.

The other point that was interesting was that the police association said in questioning that, in their opinion, the police officers, being law-abiding citizens and good employees, would live with the bill in whatever form it took. I wonder, in the light of that kind of evidence, then, if the police are not going to sabotage it in a more enlightened form, if the community groups they are dealing with don't feel the police would sabotage it, who in the police department, in your opinion, would in fact sabotage the bill if there were an independent investigation?

Are you saying it would be the superiors in the police department who do not have that degree of maturity, or are you saying that perhaps the police association is a little overly optimistic about their membership?

Mr. Dharmalingam: I don't know. It's a very difficult question to answer, Mr. Philip, because, as I said to you, in our work with the police we are able to communicate and get our views known not only to the top level but to the policemen on the beat.

In a large system like this there is always going to be some

kind of barrier somewhere. We haven't put our finger on where it is; whether it's the top man or the middle man we don't know.

But I think it's very hard for us to make any comments as to how the bill will be sabotaged and at what level. I don't know. It's very hard to say. But what we are saying in principle is that if we were to give it a try and the police are willing and the community are willing, maybe there is a chance that this bill will work.

Mr. Philip: One last question. Do you know of any jurisdiction where police investigating themselves have actually worked, and whether it has had the support and the confidence of the visible minority groups? Can you name any jurisdiction where that has happened?

Mr. Dharmalingam: None that I know of, Mr. Philip. We have looked around a little bit, but we couldn't find any evidence on that point.

Mr. Philip: Are you aware that every study that has examined some of the present police systems has also come to the conclusion that these systems are not working, and that even in the case of the Chicago one, which went a little bit farther in the direction--although not the way we would want it to go--of what Mr. Borovoy and some of the community groups are asking for, their chief criticism in examining that system was the very fact that it did not go far enough and that that was why it was failing?

And are you aware that study after study inquiring into the unemployment riots, or whatever you want to call them, in Great Britain has concluded that one of the problems in that system is the lack of an independent investigation?

Mr. Dharmalingam: We don't have all the information, Mr. Philip. If we find something like that we may be able to bring it back to the committee. I am not competent to comment on that particular thing.

Mr. Philip: I can appreciate the difficult situation that you're in. I suspect that the answers I had received from you personally would be quite different if you were here in an individual capacity, but I won't ask you that question.

Thank you.

Mr. MacQuarrie: Mr. Chairman, could I first direct a question to Mr. Philip? He referred to study after study of the Great Britain situation. I was wondering if he could identify some of those studies.

Mr. Philip: I read them into the record a couple of days ago. Why don't you read through some of these?

Mr. MacQuarrie: You read extracts from the Globe and Mail quoting some reporter.

Mr. Philip: Study after study. They are right here. If

you want to read them you can do your own homework. I have read some of them into Hansard. If you'd stay awake once in a while then you would know what the answer to your question was and you wouldn't ask me to repeat it.

Mr. MacQuarrie: I stay awake. It's difficult sometimes with you, I must confess.

Mr. Piché: This is not necessary.

Mr. Philip: Ask Mr. Piché. He's always awake and knows what's going on.

Mr. Piché: Listening and doing my homework.

Mr. MacQuarrie: It has already been appropriately referred to. Delegation after delegation have come in and said that they would sooner have no bill than the bill that is before us, Bill 68, in its present form--in other words, that they prefer the status quo to Bill 68. Is that the position of your committee?

Reverend Frerichs: Certainly not, if you have read the document, sir. Our position is that the bill could work, given people of good will on all sides, provided that the public has easy access to it, provided that complainants have protection--that's very important, because these guys aren't above retaliating, and we know of cases--provided that the kinds of recommendations we make are in fact implemented either through legislation or through regulations under the bill.

Mr. MacQuarrie: In other words, Bill 68 in its present form is far better than the status quo.

Reverend Frerichs: Yes

Mr. Dharmalingam: Let me correct that, Mr. MacQuarrie. I said that we have raised a lot of concerns in the bill. With those taken care of then we can learn to live with it in a sense. That's the point I made. It's better to have half a loaf than not to have anything at all. That's the situation we are in. So I don't want to give you the impression--

Mr. MacQuarrie: I appreciate the--

Mr. Dharmalingam: There are terrible things in--

Reverend Frerichs: Bill 68 is half a loaf; we want to have three quarters of the loaf.

Mr. Wrye: You need a lot of amendments.

Mr. MacQuarrie: I'm not that familiar with the situation that has developed in the past throughout Metropolitan Toronto between the police and some members of the visible minorities, but in the fourth paragraph on page two you refer to complaints about persistent police insensitivity to needs and lifestyles. I was wondering what you meant by that. I can understand and appreciate racial harassment.



Reverend Frerichs: A very simple example is one particular group called Rastafarians, who don't look as you and I do or even as (inaudible) and Yonas do, but who are people with those long dreadlocks and that sort of thing, and who feel, rightly or wrongly, that they are persistently being harassed and mistreated by the police simply because of the way they look and because of their lifestyle. They are perceived simply because of the way they look--not just by the police but also often in the press, and a lot of work has been done to change these perceptions--as being violent, dangerous and that kind of stuff.

That's the sort of perception of that particular group that exists and that is shared by some members of the police. There's no question about it. And a major education program has taken place within the police department to change those perceptions so that the attitudes and behaviour of the police and the relationship between the police and that group can be changed. That's a very simple example, which in fact is very recent.

Or the kind of problem that, say, black young people often experience on Yonge Street: Somebody who drives around in a flashy car with somewhat flashy clothes tends to get stopped by the police. This is a story one hears time and time again.

4 p.m.

Mr. MacQuarrie: Would you classify that as lifestyle or racial harassment?

Reverend Frerichs: That may well be because of their lifestyle. Or young people who want to use shopping plazas that are open spaces: the police are called in when kids are loud in their behaviour, and so on. Those things give rise to problems. Whether they are real or not makes no difference. The point is that people perceive that to be insensitivity and harassment, and that's why it has to be dealt with. It's a perception that becomes a fact.

Mr. MacQuarrie: I was simply wondering what you meant there by needs and lifestyles. I think in terms of lifestyles you have answered that. I guess needs are a very subjective sort of--

Reverend Frerichs: Oh yes. Of course.

Mr. MacQuarrie: In fact I guess it varies from individual to individual regardless of colour, shape, size or whatever.

Reverend Frerichs: But individuals also are parts of groups, and groups have cultural traditions and common expectations, and they talk to one another and so on.

Mr. MacQuarrie: I was wondering what you meant by police insensitivity to needs. Are there some groups with particular needs that arouse insensitivity?

Mr. Haile-Michael: No. Lack of understanding of the cultural values of those people. Sometimes the Rasta becomes

synonymous with crime. If somebody is from the Rasta he could be seen as criminal (inaudible).

Mr. MacQuarrie: You indicate that your committee has been in existence for about five years. During that time I suppose you have familiarized yourselves with the existing complaints system being used by the Metropolitan police department with the police complaints bureau. In looking at the brief which was submitted and which will be spoken to by the chief of the department it's indicated that there have been something between 800 and 900 complaints filed against members of the department on average during the past five years, ranging from a high of 890 something to 800 last year.

To my rather casual and possibly naive eye this represents a complaint against about 17 per cent of the total uniformed manpower of the metropolitan police department. It would seem like a pretty high average to have complaints of that number when you think that 17 per cent of your police force or whatever has been the subject of complaints.

In your brief you suggest that some people are afraid to come forward with complaints. Do you think there would be more complaints under the new system or under a system as revised?

Mr. Dharmalingam: I think you have pointed out a figure that I am not very clear about. You looked at (inaudible), because if there have been about 900 complaints in the last five years I can say from experience and what I know that another 900 people don't go to the complaints bureau because of its accessibility, because of the fear and also because of retaliation. So we are hoping that if this bill can minimize those kinds of things, maybe you will get more people to come out and share their concerns. I think they are going to come out only if they are comfortable with the kind of setup you are going to have and they can develop some kind of trust: "Yes, we can go and complain and get some kind of (inaudible)."

Mr. MacQuarrie: I'm trying to relate it in my mind to the total manpower and the number of individuals involved. And assuming there is not more than one complaint against any given police officer, it would seem, then, that if there were twice the existing number of complaints you are complaining about 30 per cent of your police force for one reason or another.

Mr. Haile-Michael: Mr. Chairman, the issue is not the number of complaints made; the important thing is that a complaint is made.

Mr. MacQuarrie: That's very true.

Mr. Haile-Michael: We are saying that the majority of people are satisfied with the performance of the majority of the police, but there are a very small number of persons--maybe 17, 10, whatever--who do not do their jobs properly. It is to rehabilitate those (inaudible).

Mr. MacQuarrie: I'm the first to concede that no force

is perfect and that there are bad eggs in any group of men. But I'm just trying to clarify in my own mind the possible extent of the problem, and looking at the figures that have evolved over the past five years on average and the figures that might evolve if we double that-- The Toronto police department, to my mind, is one of the finest police departments on the continent. It seems to me that most of the complaints that can be made have in fact been made, just looking at that--

Reverend Frerichs: Oh no.

Mr. MacQuarrie: You figure there are more?

Reverend Frerichs: I think there are far, far more complaints that could be laid than are in fact laid. The number of times that I personally haven't laid a complaint, not because of fear, but because I couldn't see the number of the police officer's badge. It's very simple: the fact that I don't know the name of the officer, because they have only a small number here and here and on their hats. And how many times have I been in public demonstrations, for instance, where the police have taken off their badge numbers before wading into the crowd, before calling people names and so on.

There are innumerable occasions, literally, where I would like to have complained. Last February, after a meeting of the police commission, I walked out of the commission and escorted an elderly man out who was not feeling well. There was a phalanx of police officers outside the building, first of all sort of criminalizing us--that was really the impression they were giving us: to protect the police building against someone like myself. As I was walking out with this elderly gentleman, a fellow clergyman, one of the policemen said, "Oink, oink." To my mind that's grounds for a complaint. I didn't raise the issue, because I couldn't see the man's number.

Mr. MacQuarrie: I thought that sound was ordinarily used in respect of police.

Reverend Frerichs: That may well be, but that was the sound that was used in respect of that gentleman and myself. I certainly didn't complain simply because, first, there were so many other officers around that one didn't feel comfortable even walking up to that person to ask for his badge number and, second, it was too dark to see the badge number. So if the badge number were large and one had a piece of paper with one to write it down then one might have tried to lay a complaint.

As I say, there are innumerable occasions when I personally could have done it, and this is just one instance when I didn't do it.

Mr. Hilton: Gentlemen, at the present time there are two places where you can lay a complaint: either at a police station or at the police complaints bureau. Under the bill I am sure you have read that you can now also lay that complaint at Mr. Linden's office.



Reverend Frerichs: Currently?

Mr. Hilton: Yes, but it's also part of the terms of the bill, and you may not even have to attend yourself because it can be either in writing or orally. So if it is in writing, presumably you can mail it to that office. Does this in your view assist in making the complaint system more open to the citizen?

4:10 p.m.

Reverend Frerichs: Sure, provided that people know to mail it to 360 Bay Street, fourteenth floor.

Mr. Hilton: I think Mr. Linden is planning to do a little advertising when he gets a budget.

Mr. Chairman: Gentlemen, we have three more who wish to speak, Mr. Wrye, Mr. Williams and Mr. Kennedy. Would you each please stick to the five minutes?

Mr. Wrye: I want to thank Mr. Williams for letting me go first. I have a plane to catch.

This is a very disturbing brief that you have presented, a very good one, but disturbing none the less. From the questions Mr. MacQuarrie just asked what emerged was one of the key issues, complaints that were not made, not the 900 that are, but the 900 that are not and why not and how this bill can get us to the point of how they will be made.

You said in your brief, though you haven't recommended it, that part of the problem, as you pointed out, is the stonewalling of the police, your concern. The other part of the problem is the refusal of the public to co-operate with a procedure it thinks is inherently unfair. We have heard group after group after group say they believe that is inherently unfair.

Is there some middle ground in this area that you can suggest, that you can point us to that will overcome those two extremes which appear to be on a collision course which may in the end just completely ruin the legislation? Is there a middle ground?

Reverend Frerichs: No. I don't think the problem of the Metropolitan Toronto police and its community relations will be resolved by means of Bill 68. I think it will only get resolved when we have a different police ultimately, and a different Police Act and when the police recognize and when the public recognizes, as we point out in our brief, that the essential functions of policing have changed.

For instance, you don't need a paramilitary force in order to resolve a lot of the kinds of problems that police are now called upon to resolve. That needs to be recognized by this government, with all due respect, and needs to be dealt with. That is when the problem with Metropolitan Toronto police will be resolved.

In terms of this bill, I personally don't see a middle ground.

Mr. Wrye: Let me suggest one that has been suggested that I perceive to perhaps be a middle ground.

On the one hand you are saying the police will stonewall any investigation that does not involve them. On the other hand, the public is saying if that continues we are just not going to go because it will be a trumped up investigation. A number of witnesses have suggested a method of co-investigation, an investigator from the police department working with an investigator from Mr. Linden's office. Can you see a way that could be made to work?

Mr. Dharmalingam: We haven't recommended that.

Reverend Frerichs: No, we haven't recommended that, but I was very pleased--

Mr. Wrye: You have really dodged the whole issue.

Reverend Frerichs: Yes. I was very pleased when I think I read in the press that the Solicitor General didn't seem totally opposed to that idea. I think that was in the press a week or two ago.

Mr. Wrye: I certainly hope he isn't.

Reverend Frerichs: And that there seemed to be some movement in that kind of direction.

Mr. Wrye: Do you think that might ultimately be the best possible compromise to make both sides come on side?

Reverend Frerichs: That is the best possible compromise, yes.

Mr. Dharmalingam: The kind of concern we are talking about, Mr. Wrye, is had there been proper consultation really take place with the community groups before they brought in this act, I am sure people could have thought of different ideas. Now, it is after the fact you want us to react and we are trying to salvage something. Instead of simply saying don't have the bill we are coming and saying, these are the ways we might be able to salvage something.

I think in the process Reverend Frerichs touched on the question of, if you are talking about the attitudes of the police you are also talking about the training methods. When I came to Canada and heard the term "police force," it kind of bothered me--what kind of force? A military society controlled by somebody?

So there has to some changes take place, but it also goes along with hiring as well as training and I think if some of you gentlemen have time to go and look at the training course in hiring, you will know what I am talking about. I think some of the feelings we are sharing with you is that we understand, we have

been living with it for the past 14 or 15 years I have been living in this country. So that comes out of it.

In a situation such as Mr. MacQuarrie is talking about, we are here to work with the police. I don't think we are saying the police are all bad, but there are certain elements that we need to work with. If you are going to talk about a society which is going to be progressive and going to deal with the changing nature of society, then you ought to address it very, very seriously.

We are saying if the government brings in legislation, then you ought to look into these kinds of issues and you ought to look at consultation. There are a number of groups that have been consulted with. Backtracking for a minute, when Mr. Philip asked the question, when I spoke to Mr. Head that was not a formal conversation, but an informal meeting they had, I believe, with the Attorney General. That is where the question was raised. There were two other meetings called. I didn't get a chance to go. A lot of informal conversation might have taken place, but what came out of it I can't say. Whether you can call it a consultation, I don't know.

Mr. Philip: A consultation on something this important surely means you sit down with the person and go over the key ideas. In your opinion, that didn't even happen with Mr. Head.

Mr. Wrye: I don't want to ask you any more but in closing I would like to comment that I think you have struck a very important point in the word of consultation. Members of this committee and the Solicitor General will note the very important consultation this committee has had with the community in the last two weeks and what is emerging from the consultation may make a much better bill if the Solicitor General will allow it to be so. Thank you very much for your presentation.

Mr. Williams: I think you have put forward a very thoughtful presentation today. Addressing yourself specifically to some of the mechanics of the bill, I would like to elicit from you, if I might, some further thoughts and perhaps clarification. On page six there are four points I would like to go over with you very briefly in the few moments we have left to us.

Coming to section 6(1), a point that was discussed briefly earlier between you and the deputy was about where one could lodge a complaint other than with the police, or even at the office of the public complaints commissioner. While in my own mind I thought perhaps the wider opportunity to lodge a complaint at the office of the public complaints commissioner would establish the neutral ground one would be seeking, you are suggesting that in addition to that one could perhaps informally file the complaint through a lawyer or to a legal aid clinic or community centre or library.

Do you really feel that is not putting an undue onus on those types of agencies that are really not involved in the process? I am thinking in particular of a community centre or a library. It seems to me there must be a more authoritative source that you consider neutral ground than going to an organization like that, that is really not in any way involved in this type of process.



I would hate to be a chief librarian and have somebody come in with some type of formal or legal document saying, "I want to file a complaint about the police," and feel that I had the responsibility of having to report this to the appropriate officials. Couldn't there be something like a clerk of a municipality as an example? Wouldn't that be a more appropriate type of neutral ground on which you could seek additional places of filing, rather than going through a quasi-public body such as a community centre? I question whether it is realistic, practical or appropriate to put that type of onus on that type of group?

Mr. Dharmalinger: I think part of our thoughts in recommending that was basically when we talk about one's own lawyer, people have access to go to their lawyer to do that if they want to. Currently, there are a number of cases in communities that I am aware of where people come and ask for clarification to go to legal aid clinic. The community centre is possible.

I would question about the library part. What we are saying is in those areas you can make forms available to people, but I think you want to encourage people to say this is an open system and this is the access to it, because one of the reasons the present system doesn't work is the question of accessibility. I don't want to go to the police station to do that.

Mr. Williams: I understand that. I am not quarrelling with that at all.

Mr. Dharmalingam: Taking from that, I am coming to the point that there are other areas where people walk in without intimidation and things like that. So you make things available to them at that kind of place and somebody might be there directing them where they ought to go to lay a proper complaint. I am saying you are opening up more avenues for people to know how to deal with it.

Mr. Philip: A supplementary, if I may, Mr. Chairman: Is that not the process which is happening now? What you are saying is it should be advertised and there should be specifically designated offices. I find that people come and swear statements in front of me which I pass on to the proper authorities for whatever action. What you are saying is perhaps we should designate areas like community information directory offices, legal aid clinics, perhaps MPPs' offices and aldermen's offices where people would know generally that could be done and where the people in those offices would know that it would be expected of them to perform that kind of service and act in that facilitator role.

Mr. Hilton: You can go anywhere under this bill and you just have to write out a note of three lines and mail it.

Reverend Frerichs: That is not what the bill says--

Mr. Hilton: Oh, yes, it is.

Reverend Frerichs: --at least the bill that we have.

Interjection: It does not say you cannot.

Reverend Frerichs: It is not inclusive, but section 6(1) says, "A member of the public make make a complaint at the bureau, at any police station in Metropolitan Toronto or at the office of the public complaints commissioner." If that is interpreted narrowly, then there are three places where it can be done.

Mr. Hilton: No. Go and read the interpretation section, section 1. "'Complaint' means a complaint by a member of the public, made orally or in writing."

Mr. Dharmalingam: One of the issues we are faced with, Mr. Chairman, is basically that if the people are not very educated and informed, they they will go back and do that. I have not looked at it, so I do not expect a guy who is going to come down to know. What we are trying to do through this is to have it so that the people who do not have the sophistication can easily understand what they can do. If somewhere in the bill you could say all they have to do is write a letter, they would do their part. The way you word the legislative language, sometimes it is very hard for a layman to understand.

Mr. Hilton: There will be pamphlets, handouts, advertisements.

Mr. Kennedy: Does "orally" mean a telephone call?

Mr. Hilton: Yes.

Mr. Chairman: Mr. Williams has the floor.

Mr. Williams: It seems to me the point that you are making is an interesting one and valid if it is felt that the use of the public complaints commissioner's office is not sufficient. But I would suggest to you that perhaps the municipal clerks' offices in the six municipalities involved would certainly give you the latitude and, geographically speaking, every other way, because really those are the bodies of government, to which the police commission in a sense is responsible. They would have a logical tie in there, whereas using a local library or an MPP or anybody else to assume that responsibility I would leave open to question as to being appropriate.

Reverend Frerichs: Mr. Chairman, we want the procedure to be as easy on persons as possible. The municipal clerk's office closes at 4:30 or five in the afternoon. People work from nine to five. They are closed on Saturdays. The critical places are the public library, where the form is available, so people can fill it in themselves; the community centre, where the form is available; a legal aid clinic, where the form is available, that is open in the evenings and on Saturdays so that people have access to these things. That is the critical part.

Mr. Hilton: There is a note saying when Mr. Linden's office will be open.

Mr. Williams: The point is taken. On section 9(2), you are not quarrelling necessarily with the principle of the 30-day interim reporting period, but you are suggesting that the period of time may be too long. What alternative time parameters would you have in mind?

Reverend Frerichs: For most of the kinds of complaints that one is concerned about, it seems to me a couple of weeks should be quite sufficient, with a clear provision in the bill that the commissioner can intervene earlier than that. I am not sure that provision is clearly spelled out in the bill. I understand from Mr. Linden that he can, but it needs to be spelled out because Mr. Linden may not be the complaints commissioner forever.

Mr. Williams: So you are suggesting perhaps that initial investigative period could be cut in half.

Reverend Frerichs: Yes. That is right.

Mr. Williams: Coming to the next section, 10(1), again you are talking about a time reference. It is probably a point well taken. What type of time period are you looking at here as one you think would be perceived as being realistic? How long do you think the chief should be given to complete and file his investigation report?

Reverend Frerichs: At that point, I suppose, a month would not be inappropriate--30 days.

Mr. Williams: Lastly, on section 17, the recommendations for changing police practices or procedure should be not only conveyed to the specific parties designated in the section as it sits, but also to the public at large. That one gives me a bit of difficulty because I just do not know what type of permutations and combinations may arise out of this and whether some types of practices or procedures, in order to make the police more efficient and more responsive, would necessarily be best left unsaid to the public. I do not know. I may be wrong.

Reverend Frerichs: With all due respect, sir, I think you are wrong because one of the major problems with policing is that they are so secretive. That is one of the major problems with policing.

Mr. Williams: There may be no situation where the public should not be aware, but I think that is a point we should take under further consideration.

Reverend Frerichs: Yes.

Mr. Williams: I think Mr. Kennedy wanted to ask a question.

Mr. Kennedy: I have a couple of questions. You are not satisfied that the police investigate themselves, which is the term we are using here, in the first instance. Is that correct?

Reverend Frerichs: Yes.



Mr. Kennedy: Earlier you mentioned that you knew of no city or location where such a process worked, as I understood you to say it.

Reverend Frerichs: In response to Mr. Philips' question. I think the import of Mr. Philip's question was whether we knew of anywhere where internal investigation in the first instance worked.

Mr. Kennedy: And you do not.

Reverend Frerichs: No.

Mr. Kennedy: That is what I understood it to be.

Reverend Frerichs: To the satisfaction (inaudible).

Mr. Kennedy: The Solicitor General's report to the committee on September 22 made some specific references. Are you familiar with that statement he made? I would just like to touch on that, Mr. Chairman.

On page six of that report, in reference to police doing the initial investigation, he said, "I refer specifically to the Maloney report, the investigation conducted by Mr. Justice Morand, now the Ombudsman, Judge René Marin's inquiry and the recommendation by Emmett Cardinal Carter, each one of them saying that police should have the initial opportunity to resolve the complaints. Mr. Maloney, in his thorough study of the question in 1975, concluded, and I quote, 'I do not believe that a mixture of civilian and police investigators is an answer.'" That was suggested yesterday, as well. "'I would prefer the system to build on police confidence and trust in police integrity, leaving civilian influence to review the quality of investigation.'"

"Again, in Britain, after lengthy debate, the police complaints board triennial review report to the Secretary of State included the following. 'We are therefore convinced that it is neither practicable nor desirable to establish an independent investigative body which would perform all the tasks at present undertaken by the police in relation to complaints by members of the public.'"

He then touches on the McDonald inquiry, which says, "Many complaints can be handled informally by the complainant and the RCMP member involved, thus avoiding the need for a costly investigation."

Here we have some, in my view, eminent people, independent of each other, I believe, in all instances, suggesting that this type of complaint, started by the police doing their own inquiry into complaints, seems to be the route to go. This leaves one member of this committee somewhat confused because I attach considerable credence to those reports of those eminent gentlemen. What is your response to their objective reports and to the very creditable people involved?

4:30 p.m.

Mr. Dharmalingam: If you want an objective viewpoint, Mr. Kennedy, I would have to go back and brush up on all the reports because one looks at a report and gets two different interpretations. You heard Alan Borovoy's interpretation and what he was talking about. I would tend to concur in the sense that this is one side of the story.

I have not looked at it, whether it can or cannot work, and I do not want to attach too much credibility to the report unless I read it and can comment on it. At this time I don't want to comment on it. If you want us to come back and make some comments, we will do that. But my feeling is that in some ways it is like saying it never works, it does not work. I can't buy that and nobody has proved to me the other side, that using civilians has been a failure either.

Mr. Philip: As a supplementary on that, would you not agree that those reports were done some time ago and that since then we have had an extension of services? There are your own, for instance, which I believe have provided an important service in the community. I appreciate what you are doing, even though I may not agree with the final conclusions of your recommendations because I don't think they go far enough. None the less, I can appreciate what you are saying and where you are coming from.

We have had that, plus the community service officers, plus a trend toward officers on the beat. All of these things have happened in the last five years since these reports were done. Surely we are in a different environment now and the conclusions--

Mr. Kennedy: Mr. Chairman, who has the floor?

Mr. Philip: Would you not agree that the conclusions of these groups might be quite different--

Mr. Kennedy: I have the floor. Do you want to ask a supplementary, Mr. Philip?

Mr. Philip: I was, if you were listening to me.

Mr. Chairman: The rule is, Mr. Philip, that it is only with the consent of the person who is questioning. I let you run because I thought Mr. Kennedy was through. You are not through. Is that correct?

Mr. Kennedy: It is alleged that these are old reports that are in the current report from the Solicitor General. Emmett Cardinal Carter's report isn't five years old. It doesn't go back to 1975. Is there anything more current than this?

Mr. Hilton: October 29, 1979 is the date of the cardinal's report.

Mr. Kennedy: That isn't six years old. Sure times change and they are changing fast, but I wouldn't discount the reports of those gentlemen by virtue of two or three years.

Mr. Williams: Hear, hear.

Mr. Dharmalingam: Mr. Chairman, I thought I was trying to answer that I was not ready to comment on that.

Mr. Chairman: You did answer it quite well. You said that you did not care to answer at this time on that subject. I understood you, sir, even though perhaps Mr. Philip didn't quite understand you.

Mr. Kennedy: Could I suggest, Mr. Chairman, if the gentleman would care to submit anything further--

Mr. Chairman: In writing, if you would, to the clerk.

Mr. Dharmalingam: Yes.

Mr. Philip: With respect, Mr. Chairman, I think they understood my supplementary and were in the process of answering it when they were so rudely interrupted by Mr. Kennedy.

Mr. Chairman: Mr. Kennedy, are you through with your questions?

Mr. Kennedy: I am, sir.

Mr. Chairman: Gentlemen, is there anything else you wish to say to the committee?

Mr. Dharmalingam: I thank you for listening to us. I hope the bill will improve.

Mr. Chairman: Thank you very much for appearing before us today.

Gentlemen, there is just one point. The clerk tells me that he has been in touch by telephone with Judge Givens's office. He has other appointments that day but he will be contacting the clerk tomorrow morning to see if he can rearrange his schedule to appear before us.

The committee adjourned at 4:33 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
MONDAY, OCTOBER 5, 1981  
Morning sitting



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Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister  
McMurtry, Hon. R., Solicitor General  
Ritchie, J. M., Director, Legal Branch

Witnesses:

Flynn, D., Mayor of Borough of Etobicoke  
Godfrey, P., Chairman, Municipality of Metropolitan Toronto  
Lastman, M., Mayor of City of North York

Also taking part:

Givens, P., Chairman, Metropolitan Board of Commissioners of Police

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 5, 1981

The committee met at 10:21 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. The first witness of the morning is Paul Godfrey, chairman of the municipality of Metropolitan Toronto.

Mr. Godfrey: Mr. Chairman, Mr. Solicitor General, members of the committee, I am accompanied this morning by Mayor Lastman of the city of North York and by Mayor Dennis Flynn from the borough of Etobicoke and a member of the board of commissioners of police. I expect Mayor Gayle Christie to arrive very soon. Two other mayors would have liked to have been here this morning, Mayor Alan Redway of the borough of East York and Mayor Gus Harris of the borough of Scarborough. I am speaking on their behalf.

I come here in the dual role of chairman of Metropolitan Toronto, speaking on behalf of the council of Metropolitan Toronto, and as a member of the board of commissioners of police. In talking to this very important matter, I would ask the committee's indulgence in allowing me to take you back a few years, back to the year 1974. There is a very important history lesson which has not been put on the public record in front of this committee which is very important for the consideration of Bill 68.

Back in the year 1974, when I was chairman of Metropolitan Toronto, there was an incident that took place which involved a great deal of controversy between the Metro police and a group of students living in a building that was known as Rochdale College at the time. It was a building on Bloor Street that received a lot of criticism. There were a number of incidents that took place in which the police had to go into Rochdale in order to keep the peace. There was some criticism of them in the manner in which they did that.

At that time, I had a speech prepared to give to an organization which, to be quite honest, was a boost-Metropolitan-Toronto-police speech. After I gave that speech, I was somewhat criticized by a member of the media who is here in this room, Mr. John Downing, who indicated to me the concerns he had with the complaints procedure. I did some research into that. I too came to the conclusion at that time as a member of the board of



commissioners of police that the complaints procedure was not satisfactory for this community.

I had discussions with other members of the board of commissioners of police in 1974. I contacted the then chief, Harold Adamson, and indicated that I, as a member of the commission, wanted an impartial study carried out by an independent person of the whole complaints procedure. I suggested to them the name of Arthur Maloney, who was a well-known criminal lawyer in Metropolitan Toronto prior to his appointment as the Ombudsman of Ontario.

On a unanimous vote of the police commission, Mr. Maloney was appointed and he carried out a study which took longer than one year. He completed his report in 1975. I must say that in 1975 the police commission adopted the essence of the report. The metropolitan council adopted the essence of the report. I did not hear any negative comments from anyone at that time about the general process of handling police complaints.

Very basically, he pointed out that in the first instance the police should have the opportunity to investigate the complaint. In the second instance, if necessary, there would be a public complaints commissioner. I think he called it a commissioner of citizens' complaint. It would be very similar, but not exactly, to the bill that is now in front of the Legislature. That was back in 1975.

The first point I want to emphasize is that back in 1975, at my insistence and with the co-operation of the board of commissioners of police and the co-operation of the metropolitan council, we were not setting up a study to handle complaints against minorities, whether they be black or white or Catholic or Jewish or any other minority group. We were hoping to establish a complaints procedure for all the people of Metropolitan Toronto.

There were no members of the Legislature then who were really interested in it. There were very few members of the public who expressed great concern. It was a concern that the board of commissioners of police themselves had, and we had the co-operation of the police association in undertaking that study. We adopted that as a board and sent it on to the metropolitan council. It was adopted at the council level and it was sent on to the Legislature. Unfortunately, it was delayed for a number of reasons. At that time, there were a number of other accusations against police officers which, on the request of the board of commissioners of police, resulted in the Solicitor General instituting the Morand inquiry.

At the end of the inquiry, Mr. Justice Morand, who is now the Ombudsman for the province, suggested that the Metropolitan Toronto police have a complaints procedure similar to that which Mr. Maloney had recommended earlier. Again, at that time, the board of commissioners of police and the metropolitan council adopted Mr. Morand's suggestion and reiterated its support for Mr. Maloney's position. I repeat: It was not a complaints procedure for minorities, whether they be black or white or homosexuals or

Catholics or Jews; it was a complaint procedure to be established for all the people of Metropolitan Toronto.

Since that time we have had other investigations; one was into racial violence in the subway system by Walter Pitman. We have had Cardinal Carter, at the request of the Metropolitan Toronto Board of Commissioners of Police, investigate relations between minority groups and the police. In each and every case, the recommendations put forward were to bring in recommendations, urging recommendations similar to what Mr. Maloney had brought in and not very dissimilar to the bill you have in front of you today.

10:30 a.m.

I am somewhat irked, to be quite honest with you, and so are my colleagues, to read in the media day after day that the police in this community are under attack for having been proposed to be given the right to investigate complaints in the first instance. I do not pretend to be an expert in this area, nor do I pretend to have all the answers, but I think that the police commission undertook and supported Mr. Maloney's independent investigation, and I have yet to hear anybody downplay that or say that was a wrong move or say that his recommendations were wrong.

In examining all the systems he could find--and he did not keep his study just to North America or Canada; he investigated systems all over the world--it was his conclusion, not mine, not the board of commissioners of police, but his recommendation, that in the first instance the police should be given that opportunity, because it was his belief, based on the experience of other jurisdictions, that the vast majority of complaints would be solved by the police themselves building up confidence between those who complained and the police themselves.

It did not set up a system whereby it caused the police officers themselves to be defensive, because I think that Mr. Maloney and Mr. Justice Morand both realize that for a system to be successful it should rely on joint co-operation.

I am here to speak in support of Bill 68 because it is a pilot project. It is not cast in stone. It is based on a system which people who are independent, people who are somewhat more expert than I am, have taken an independent look at. I say I am irked, because there have been all types of accusations saying that the police have no right to look into these things themselves. I indicate to you that any so-called independent investigation is going to need trained investigators, probably with some policing background.

My experience as a member of the board of commissioners of police is that the police themselves are probably tougher on their colleagues than anyone else. I read in the media that there is a group that has established themselves who are going to accept calls on behalf of the public to handle complaints against the police. I realize that one should not take as fact information directly from the media, but I am told they have received 100 complaints. Yet, on checking as late as last Friday with the complaints bureau of the Metropolitan Toronto police, I find not

one of those calls have been forwarded to them for information or for assistance, which says something to me about the system.

I do not believe that we need a vigilante group in town, in Toronto, to go around monitoring the complaints against the Metropolitan Toronto police. I believe that if the system were allowed to be tried the system would basically work.

As I said at the beginning, I speak for five mayors in Metropolitan Toronto, two of whom are with me here and, as I said, I expect Mayor Christie. Mayor Redway and Mayor Harris also both support the position of Bill 68.

I must say that the Solicitor General and Attorney General, last year, met with all the mayors of Metropolitan Toronto. I have complained from time to time about the consultation process between municipalities and the province; I thought it has been pretty poor. But the Solicitor General has been most co-operative. He has allowed local input from the mayors, he has consulted with others and I think has come to the conclusion that this bill is a very positive step.

We have waited since 1975. I think we have been patient. We have attempted to bring some pressure upon the government to bring this bill in. We realize there has been opposition from some quarters, but I believe this bill represents a very solid first step in giving to this community a public complaints procedure that is fair to the public and fair to the police. I think that is what you have to look for: something that is fair to all people.

I wear my hat both as a representative of the board of commissioners of police and as a representative of the all the people of Metropolitan Toronto. I am looking for fairness in the system; the mayors of Metropolitan Toronto are looking for fairness in the system. I think we have that in Bill 68.

I am prepared to answer any questions, Mr. Chairman, that your committee would like to put forward. I thank you and your colleagues for giving me the opportunity of presenting those remarks on behalf of the mayors of Metropolitan Toronto and the metropolitan council.

Mr. Chairman: Thank you, Mr. Godfrey.

Mr. Williams: Mr. Godfrey, the committee certainly appreciates having had the benefit of the official view of the Metropolitan Toronto corporation as expressed by yourself and supported by the constituent mayors of the various municipalities.

I gather what you are really saying to the committee today is that, while the framework of this bill may not be identical to what the Maloney report produced, it really is an extension of the wishes of the Metropolitan Toronto council in concept and in purpose. Is that correct?

Mr. Godfrey: Yes, I believe that to be so. The Metropolitan Toronto council, since 1975, have taken a position of being supportive of a process similar to what Mr. Maloney had



brought forward. We have had other opportunities to endorse that concept--in 1977 with Mr. Morand's final report, Mr. Pitman's report to the Metropolitan Toronto council and Cardinal Carter's report to the police commission. So we have constantly been in support of that similar type of process.

Mr. Williams: One of the consistent features coming out of those various reports and studies was support of the idea of the police having the opportunity to initiate the investigations with regard to the complaints laid against members of the police force, before going to an independent body, was it not?

Mr. Godfrey: We debated the concept of the Maloney report, of which that was an integral part; and constantly, throughout all the discussions, we kept referring to a Maloney type of process. I must say that was totally part of it.

Mr. Williams: That has consistently emerged from subsequent reports, including the Morand report: that there seemed to be nothing untoward or inappropriate in having the police officials initiate investigation among themselves before they moved to an independent level.

10:40 a.m.

Mr. Godfrey: I believe that all members understood that. I do not think we ever got into the process of separating the report that much. The members all had the opportunity of reading the report. They knew how the system was set up, they knew the step-by-step procedures and really did not dissect the report in such a way, because they had confidence in the independent review that Mr. Maloney had undertaken.

Mr. Breithaupt: Could I just ask a supplementary question on that point, Mr. Chairman?

With respect to the framework that was to be expected, was there also at least a sense among the commissioners, or among metropolitan council, that the occasional separate investigation, the exception, would be fitted into some sort of a framework so that there would be an understanding that in a particular circumstance the opportunity would be there for the system to have some sort of a parallel approach or, indeed, an independent approach from the police system itself?

Mr. Godfrey: We always knew that the system had to be devised in such a way that either the chief of police or someone else would feel that it was necessary to go to a different approach. That is the reason we were not opposed to a system which said where there was an exceptional circumstance caused by really undue delay. We would be supportive of that.

An example of that is in the Albert Johnson situation, where another police force looked into the situation. The fact is that the Metropolitan Toronto police have taken, as far as I am concerned, undue criticism from some people. They themselves have been the most supportive of, and on the first occasion expressed the desire to have, a system like this set up; not just the board

of commissioners of police, but the association themselves. That is fairly significant, and it has been somewhat lost in the criticism by some of the groups who have come in.

Mr. Williams: So you are telling the committee that the bill we have before us today is really built on historical development that preceded some of the more recent events which have created so much publicity in the media; that it is much broader than those individual issues that have been given all the attention in the press and goes to this broader base that you talked about, going back to their council's involvement back in 1974?

Mr. Godfrey: Mayor Flynn has just reminded me that every time we have had a public hearing which involved police action and where individuals came in to criticize the activities of the police, we have always reiterated our support and urged the provincial government to proceed with a bill based on the Maloney report.

At times, I sit back and am amazed. Back in 1974 and 1975, when the board of commissioners of police first talked about this and the metropolitan council debated it, there was no one out there who was really banging the door and calling for this. I am somewhat amazed that there are now some Johnny-come-latelys who suddenly have become experts in this area. With great respect to the Solicitor General, this concept was not devised by the Solicitor General; it was not devised by the board of commissioners of police.

We who are in public life somehow always feel, if we come up with something, someone is going to criticize it and say, "You do it for self-interest." We at the board of commissioners of police were very careful to make sure that we did not sit down and say, "We are going to devise a system and do it ourselves," because we knew that, where that sort of thing takes place, somebody will come along and say: "Naturally you are doing it that way, because it is the way you want it to be. You just want to sort of circle the wagons and protect yourselves."

We made sure we did not fall into that trap. We knew that Mr. Maloney would be considered not only independent but also knowledgeable in the area. His terms of reference were very broad, and he was given almost an unlimited budget. It cost us in the neighbourhood of \$140,000 or \$150,000 for the one-man study.

We think he did a great job. Others must have thought he did a great job, because a short time afterwards he was appointed Ombudsman of the province--and his appointment, as I recall, was welcomed on all sides of the House and in all circles as being a good appointment--partially based on his experience in the past and the great work that he did for the police commission itself.

Mr. Williams: Mr. Godfrey, you made mention--in fact, you were critical--of a self-appointed citizens' group. Without identifying that organization, I presume you were referring to the group which calls itself the Citizens' Independent Review of Police Activities. Is that the organization you were alluding to?

Mr. Godfrey: Yes. It is the one that is supported by eight aldermen in the city of Toronto.

Mr. Williams: A former alderman of the city of Toronto, Mr. Sparrow, appeared before the committee one day last week to speak on behalf of this organization. I must say that, based on some of the material filed and comments, the concern I had--I do not know whether it was shared by other members of the committee--was that it seemed this organization had more in mind an approach to the system on a basis of confrontation, rather than one of consultation, with the police commission and police authorities. That gave me a great deal of concern. Now I hear you expressing similar criticisms and concerns about this same organization.

Another concern I had was how this organization, without any official status in the community, could effectively serve the community at large when it was simply running parallel to, or I suppose in some sense in contradiction to, the type of board that is intended to be established by this legislation and the bureau as well.

Mr. Godfrey: Mr. Williams, I am very concerned about that for a couple of reasons. When eight aldermen in the city of Toronto lend their names to an organization that has no access to public files, set themselves up as running an investigation with no authority, with no experience that I know of, with no background information or knowledge, and with no experience of solving anything in the past, I am afraid that some members of the public may be under the impression that they really can do something for them.

I am not interested in confrontation-style solutions to policing matters. The Legislature, the board of commissioners of police and the properly elected councils of various municipalities that make up Metropolitan Toronto can devise a system based on experience of other jurisdictions, based on the input from the best experts we can find. That type of system should be established, and it requires co-operation, the co-operation that will develop as a result of the bill in front of the Legislature.

It may not be perfect and there may be reason to change it a year or two years or three years down the road--I do not question that; what is good for some other area may not be good for this community--there may be alterations to it. But I would rather go with the pilot project that at least has the support, the background and some experience from other areas that at least this bill seems to have.

10:50 a.m.

Mr. Williams: Can I just ask you one more question, Mr. Godfrey? Then I'll let the other members ask questions. I want to put this question to you in your other capacity; that is, as a member of the police commission.

I don't know to what extent you can speak on behalf of the commission here this morning, but I presume from that perspective



that this bill before the committee has also received careful and in-depth consideration by the commission and in large measure has support by reason of it being one that would appear to serve both the police and the community at large equally and fairly.

Mr. Godfrey: I think if we were writing the bill ourselves there probably would be some changes in it, but in the main the bill is quite good. We think it can function properly. We think the bill will serve the public and the police equally. I think that is important, sir. That is the key thing, that the essence of the bill will serve the police and the public fairly. That is what we have to hope for.

Mr. Philip: Mr. Godfrey, I wonder if you can tell me if you are aware of an organization called Religious Leaders Concerned About Racism and Human Rights?

Mr. Godfrey: I may be. I cannot recall that name.

Mr. Philip: There are a number of ministers and priests involved in that organization.

Mr. Godfrey: The great problem, sir, is when you have so many--

Mr. Philip: The answer is no, is it?

Mr. Godfrey: If you will let me finish, I will try to answer that question. We have so many groups that bring forth a name for themselves. I do not necessarily know them by name; some of them I know by individuals you see in front of you. A lot of changing of names goes on, because the compositions get all changed around too.

Mayor Flynn, who chairs a subcommittee of the Metropolitan Toronto Board of Commissioners of Police that deals with a number of minority groups and has been doing that for a year and a half, meets with them and the police association to attempt to solve ongoing relation problems in this community. Maybe he would be able to answer that question better than I can. I cannot say I know the name itself, but I may know individuals who belong to that group, sir.

Mr. Philip: Mayor Flynn, are you familiar with that group?

Mayor Flynn: Mr. Chairman, I am not familiar with the group by that name, but I am familiar with a group of ministers and priests who have appeared before the subcommittee on minority relations of the police commission. I might know them by names of individuals but not by that particular name.

Mr. Philip: Okay. Mr. Godfrey are you familiar with an organization that I am sure you will agree has not been recently initiated, called the Quaker Committee on Jails and Justice?

Mr. Godfrey: I cannot say I have met the group, sir.

Mayor Flynn: They have never appeared before my committee.

Mr. Godfrey: Let me tell you, the police commission has open meetings and we have had many public deputations. I have not heard or seen the first two groups you have mentioned in front of the police commission meetings, and I think my attendance there is pretty good.

Mr. Philip: You are familiar with Neighbourhood Legal Services, I would assume?

Mr. Godfrey: I have heard the name, sir.

Mr. Philip: Yes. Is that group the kind of group that would normally be associated with a "vigilante" group?

Mr. Godfrey: I am saying to you at the present time that the group that has established itself as an organization to solve complaints between the police and the public is a vigilante group. People who associate with that group, I would have to put in that category.

Mr. Philip: So you would state that organizations such as the ward 6 Community Organization, the Quaker Committee on Jails and Justice, the Rape Crisis Centre, the Metropolitan Toronto chapter of the National Black Coalition, the Black Resources and Information Centre, the Union of Injured Workers, the Riverdale Action Committee Against Racism, the South Asian Origins Liaison Committee, the Metro Tenants Legal Services, the Indian Canada Association and Neighbourhood Legal Services, to mention only a few, have formed into a vigilante group? Is that what you are telling the committee?

Mr. Godfrey: Mr. Chairman, I realize a lot of those groups may not know what they have got themselves into. Some of those organizations have performed quite well and have done a reasonably good job in this community. I think they have been misguided in taking part in a group that has no status, that has no access to files, that cannot serve the public in Metropolitan Toronto very well at all. That group has no interest in solving problems involving police. Groups that belong to that organization are misguided with respect to this issue.

Mr. Philip: So what you are telling this committee is that these well-respected groups, representing visible minorities in our community and indeed representing legal services in our community, may not be part of a vigilante group by intent, but they are part of that group by accident or because they do not know any better or because they are too stupid to understand--

Mr. Godfrey: I never used the word "stupid," sir. If you choose to use that word, you use it. Don't put words in my mouth. Let me tell you that if an organization joins up with this group that cannot solve the problems involving the police and the public, then it had better reassess itself.

Mr. Philip: What proof do you have that an organization that is only a few weeks old cannot solve problems?

Mr. Godfrey: You know, sir, either you are not too smart in asking that question or you have not thought it through properly. I am somewhat amazed that any person would sit around here and indicate that, if you do not have access to the public files, if you do not have the co-operation of the police and the community, if you have no status at all and if you are suddenly wandering here and there and supposedly have received 100 phone calls and have not in that time taken one of those calls to the proper complaints bureau and given it a chance to see that a problem could be solved, anything is going to be solved. Come on!

Mr. Philip: I am somewhat dismayed that you and your office would choose to try to present your point of view by smearing some very well-respected--

Mr. Godfrey: Sir, I did not smear anyone. That is a typically cheap shot that I expected from you.

Mr. Philip: I would think it is a typical cheap shot that I would expect from you to call these people vigilante groups when they have served our community very well.

Mr. Mitchell: You did not listen to the comments made. Typical of that side again.

Mr. Philip: May I carry on?

Mr. Chairman: Yes, you may. Mr. Philip has the floor.

Mr. Philip: I wonder, Mr. Godfrey, if I or a group of people were to encourage complaints to come forward, would you consider that the role of a vigilante group or would that be a legitimate role, as you see it?

Mr. Godfrey: I think there is a proper procedure to put forward. When this Legislature puts forward a system, I would hope that the public and the police would co-operate with whatever system is put forward. I think this Legislature sets the law of the land and it can make the decisions based on experience, based on all the information brought forward. I would expect at that point that, whatever system is established by this group, the public and police would all co-operate with it.

Mr. Philip: So your answer is that you would not consider it to be an illegitimate activity to encourage complaints to come forward?

Mr. Godfrey: Not at all. In fact--

Mr. Philip: Fine. Thank you. Next question: Would you consider--

Mr. Mitchell: The question was answered; don't use it to feather your bed.



Mr. Godfrey: It is not bringing the complaints forward that I'm worried about at all; it is the resolution of the complaints. I am not interested in complaints just being brought forward to have confrontation.

11 a.m.

Mayor Flynn: Mr. Chairman, one of the organizations mentioned is an organization named BRIC, the Black Resources and Information Centre. BRIC, as a formation, is a very good part of this community. It has met with my subcommittee on four occasions. On each of those occasions we have encouraged BRIC to bring forward to the proper authorities the manner in which they would associate themselves for investigative purposes to determine exactly what is going down in the black community.

They are a black resource organization whose headquarters are on Bloor Street, and they have been doing a fantastic job in the years they have been there. That they happen to be a part of this organization does not relieve them of the responsibility of carrying out their other work, which is taking complaints from the community and, in a co-operative vein, going to the police and, through the police complaints bureau, following up all the complaints they have. But they are not investigating on their own to do that. They are in co-operation with the police force and they find very good results to the questions they ask.

Mr. Philip: I am glad to hear that the mayor of Etobicoke at least does not consider that group as illegitimate or as a "vigilante" group and that their action of encouraging--

Mr. Godfrey: No one said the other ones were illegitimate groups. That is your terminology, not mine.

Mr. Philip: You labelled them as vigilante groups.

Mr. Godfrey: Let us get the facts straight. I said the group that has been formed, in my opinion, is a vigilante group, and those who associate with it had better reassess their involvement. I did not call them illegitimate. You called them illegitimate.

Mr. Philip: So your position then is not that these individual groups are vigilante groups--

Mr. Godfrey: I never said that; you said that.

Mr. Philip:--selectively, but that collectively they are part of a vigilante group?

Mr. Godfrey: I did not even say collectively. I said the group that has been formed--CIRPA I think is the name of it--

Mr. Philip:--is a vigilante group.

Mr. Godfrey: Yes, sir; and I repeat that.

Mr. Philip: So what you are saying is that these groups are members of a vigilante group?

Mr. Godfrey: I say that those groups that associate with it should reassess their involvement, because they are not doing the public and this community any good at all.

Mr. Philip: So what you are saying is that these legitimate, well-respected community groups are part of a vigilante group? Is that not what you said?

Mr. Godfrey: Why don't you twist the words any way you want them.

Mr. Philip: I think the record will show what you said. That is fine.

would you agree that providing immediate and sympathetic support to victims of police misconduct, or alleged police misconduct, is not a vigilante task?

Mr. Godfrey: Alleged or proven?

Mr. Philip: How can you prove it until the investigation is concluded?

Mr. Godfrey: That is the whole purpose of this thing. The whole purpose is to set up a proper, public complaints procedure to prove things--not to make allegations. That is the whole solution to it.

Mr. Philip: Providing sympathetic support, then, is that coming to conclusions, or is it facilitating getting the facts before the police complaints bureau?

Mr. Godfrey: Anyone who wants to encourage people to come forward, to bring their complaints forward and to go through the proper process should be commended. Groups attempting to solve problems without all the information do this community no good at all.

Mr. Philip: Would you agree that it is a legitimate function to give advice on civil, criminal and other alternatives of police complaints procedure and to warn complainants about the dangers of following various procedures?

Mr. Godfrey: I think that is quite a proper role for people who are knowledgeable in that area.

Mr. Philip: Would you agree that looking into creative and innovative solutions to prevent further police misconduct or misunderstandings is a legitimate function of any group?

Mr. Godfrey: Again, alleged or actual, sir?

Mr. Philip: Either/or.

Mr. Godfrey: There are a lot of allegations each and

every day. Sometimes they are proven and a lot of times they are not proven. I think when this Legislature establishes a proper public complaints procedure, as I believe Bill 68 does, all the public should be encouraged to use that. If other groups want to form to give people advice on how to handle a complaint, that is fine, but the only organization that should attempt to do the investigation is the group that is formed by the Legislature.

Mr. Philip: Have you read the testimony of CIRPA before this committee?

Mr. Godfrey: I cannot say I have, sir.

Mr. Philip: Or of any of the people who are members of the group or any of the associations?

Mr. Godfrey: I have read the newspaper accounts, which I admit is a dangerous way of doing things. I have had some experience with some of the individuals who have made certain allegations. I believe that in those instances newspaper accounts are probably pretty accurate.

Mr. Philip: Sir, with the greatest of respect, I suggest that you might read the testimony of CIRPA, who definitely stated that they were not a vigilante group.

Mr. Godfrey: I would assume they would say that.

Mr. Philip: You might read their objectives, some of which I have just read to you and which you have admitted are not vigilante activities, before you smear all of these community associations.

Mr. Godfrey: I think you have been doing most of the smearing here today, sir.

Mr. Philip: Mr. Godfrey, can you name one visible minority group that you contacted before appearing before us here--whose advice you sought on this bill?

Mr. Godfrey: Yes. In fact, the Solicitor General and I met with a number of people in the black community some time ago. We were invited into his office. The Solicitor General asked me to attend that meeting. We had discussions with members of the black community.

Mr. Philip: Which groups?

Mr. Godfrey: I think I can name some of the individuals who were at that meeting. There was Dr. Head, Mr. Al Mercury, Jean Gammage. There may have been one or two others at the meeting.

Mr. Philip: Can you explain why Dr. Head, when questioned here, could not remember having ever been consulted by the Solicitor General on Bill 68?

Mr. Godfrey: I really could not tell you that. It is tough enough for me to speak for 39 elected representatives on the



metropolitan council without trying to say why somebody could not recall something else. I am really not sure, sir.

Mr. Philip: Can you explain why not one community group among the visible minority associations have come forward in support of the bill?

Mr. Godfrey: I happen to believe, sir, that the vast majority of people who live in Metropolitan Toronto--whether they be black, white, yellow, Catholic, Protestant or Jewish, whether they are Italian, Portuguese or any other group--believe that in the end government in this country and this province will do right by them. I think they believe they are in the good hands of the elected representatives no matter which party they represent. They have a sincere belief that the representatives will somehow make the right decision.

We all know that governments sometimes do not make the right decisions, but governments, whether it be the city of Toronto, Metro, the province of Ontario or the government of Canada, in the main mostly make the right decisions on behalf of the people. I think the trust that the majority of people have in their governments is an indication of why this room was not filled day by day with citizens whose main interest is to put food on the table for their families.

In every society there are groups that come forward that have genuine concerns. They think things may not be right. They look at it from their own perspective. I do not knock the fact that they are looking at it only from their perspective.

But, as I said at the beginning, I think the majority of the people of this community do not believe we are setting up a public complaints procedure for minorities. We are setting up a public complaints procedure for all the people of Metropolitan Toronto--and all of the people includes all of the minorities. It has to be all the people.

I think the majority of the people believe this committee, the metropolitan council and the metropolitan board of police commissioners are going to recommend the best system for everyone.

Mr. Philip: Would you agree that the Canadian Civil Liberties Association represents the rights of all of the people and not just the minority groups?

Mr. Godfrey: I believe the Canadian Civil Liberties Association attempts to represent the views of all the people. But I believe the Legislature is probably the final group that represents the views of all the people.

11:10 a.m.

Mr. Philip: Would you name one community-based group that is in support of the bill as it now stands? If a majority of people out there really are in support--

Mr. Godfrey: Yes. The Metropolitan Toronto council,

representing 2.2 million people. I am sure, as a representative of Metropolitan Toronto, you would not deny the opinion of a duly-elected representative from the municipal level.

Mr. Philip: No, I would not. But I would also accept the input--unlike you, sir, apparently--of the community groups that are appearing before us.

Mr. Godfrey: Sir, you have to weigh balance. Like you, these gentlemen were elected by the majority of people, and so were the other 37.

Mr. Philip: I was elected also, but I do listen to my constituency.

Mr. Godfrey: They listen to theirs.

Mr. Philip: No further questions, Mr. Chairman.

Mr. Breithaupt: Could I ask a supplementary on the last question, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Breithaupt: One of the difficulties we have had on the committee is to try to strike a balance between the variety of groups who have come before us and the view which clearly the Metropolitan Toronto council has taken.

I realize it is difficult to know just how many individuals are represented by any group at any time, but at least we have had some consistency in a variety of spokespersons who are concerned about the major theme, which is the police investigating themselves.

We have the two reports you referred to as to how this bill was developed, and there are other reports which the Attorney General can cite at the drop of one of his hats without any trouble at all to show we are in a situation that gives us an opportunity to go ahead in this pilot project and to deal with it as best we can.

I am impressed with the fact that the mayors of the other portions of Metropolitan Toronto as well as you, Mr. Godfrey--other than the city of Toronto--are strongly of the view that this system can work. We are aware also that in a variety of other areas many of these problems are coming forward. This is not just a downtown Toronto concern. Unfortunately, each of the communities has areas of concern that have to be sorted out by this bill.

You may not wish to, but can you comment on why it appears that not only a goodly number of aldermen in the city of Toronto but also a variety of groups--some with quite long service, such as the National Black Coalition--are concerned about this theme and simply cannot relate to the thought of the police investigating themselves even though, for a variety of reasons, we are told this is the only practical system?

Mr. Godfrey: I would like to comment on that, sir. I think some of the groups--and I emphasize very legitimate groups who have made a very valuable contribution to the community--look at the bill without the background and information that both Mr. Maloney and Mr. Morand looked into. If I did not have the benefit of the independent input that both these gentlemen had, I might have come to a different conclusion myself.

I also realize--again, I emphasize that I do not criticize--the fact that groups look at proposed legislation from their own perspective and not necessarily the perspective of the total community. I believe it is paramount that we in public life look at systems that have been tried and worked and at those that have not worked. Unfortunately, some of these organizations are receiving information based on very limited experience, and probably from their own perspective they feel they are right. I do not quarrel with them. I think some individuals honestly believe that the system being proposed is not right as strongly as I feel the system that is being proposed is correct.

When the Solicitor General and I met with them, we both indicated, "Let's try it." It is not carved in stone. It is not going to go away. If there are mistakes in it, if it does not mesh properly, if it does not work well, I would be delighted to change it.

Again, I repeat that in 1974 and 1975 no one was calling out for this. We at the board of commissioners of police wanted to bring in a system that would work well, because we recognize the police and the public have to work well together. If it does not work well, we are going to have chaos in our community. That is the reason why we started this long process which at least has come to this point today, and we are grateful for that.

In conclusion, we are attempting to look from a very broad perspective, whereas some of the others may be looking at the viewpoint from individual complaints they have received without basically studying the overall view that other jurisdictions have gone through.

Mr. Breithaupt: In your earlier comments you said that had the bill come more fully today from the point of view of either the police commissioners or Metropolitan Toronto there might have been some things you would do differently. Are you able to snare with us what kinds of things those are so that as we look at the bill on a clause-by-clause approach these themes can be discussed? Or is there anything that is that particular?

Mr. Godfrey: There is nothing that particular. The reason I say that is that when I put on my hat as a member of the board of police commissioners I too sometimes get narrow in my viewpoint. I too sometimes only look at the narrow perspective, because I am a police commissioner. I realize again it is somewhat difficult when you go in and put on the other hat as the chairman of Metropolitan Toronto--and I think that is human nature; that is why I say that, although I may have written it a little bit differently, I think I am talking about a word here and there rather than the bill itself.



I sincerely believe that if the bill was in place before today, some of the problems and confrontations that have taken place between the police and some of the groups in the community may not have escalated to the point they did. If Mr. Linden, for instance, was there to handle that sort of complaint, I do not think there would have been the crying out for inquiries, nor would there have been the charges. Everybody would have known there were--

Mr. Breithaupt: Certain safety valves.

Mr. Godfrey: Sure. That is why I think it is a shame that it was not in earlier. You cannot cry over the past. What you have to do is try to get this into place in a very official way as soon as possible.

Mr. Chairman: Mr. Laughren, would you submit to a further supplementary from Mr. Williams?

Mr. Laughren: Yes.

Mr. Williams: It was not a supplementary, I just had one question. I will follow Mr. Laughren.

Mr. Laughren: The word "submit" was correct.

11:20 a.m.

The chairman used the expression, "the police and the public must work well together." I think we all would agree on that, and I suspect those groups would agree with that too.

Mr. Godfrey: I think everybody does. That is the catchphrase everybody is using.

Mr. Laughren: So that is not in question. I think what is in question, though, and I would like your response, is that there is at least a sense by a lot of people that those who would benefit most from an independent review or investigation are those visible minorities. Whether that is true or not, I am not sure, but I think there is a sense that that is who would benefit most. I would be interested in knowing if you feel that is the case; if you do, then surely it is not just all the people who should make the determination about the review system or the investigation.

Mr. Godfrey: I am somewhat interested in answering your question with a question: How would they benefit, Mr. Laughren? Again, I guess--

Mr. Laughren: I did not mean it as a trap.

Mr. Godfrey: No. I know you did not. I guess what I am saying is that you cannot devise a system, I believe, that is going to satisfy 100 per cent of the people. I think you have got to devise your process to try to solve the maximum number of problems on both sides, the public as well as the police; and I think that, as one gets used to the system and makes one's carburetor adjustments or monitors changes along the way, one will

pick up a lot of the concerns. When it is in practice, I think you are going to find that a lot of the concerns can be handled and handled well.

I think the key is not so much the detailing of the system, of the bill; I think the key is the public complaints commissioner and how he works for the people who complain and the police. That is why I think we have been fortunate in this community, in the first instance--and I have yet to hear anyone who has been critical of Mr. Linden's appointment. I think that is the key. You can devise the best rules in the world but, if you do not have co-operative individuals involved, the system is going to fail.

But I think the fact is that you cannot devise a system which will satisfy 100 per cent.

Mr. Laughren: But does it not give you cause for concern--it does to many of us on the committee--that the people who are most concerned about the bill in its present form are the visible minorities? Those are the people who have joined together, in CIRPA basically, to express their real deep concerns about the bill as it now stands. We have an obligation to respond, because the alternative is to set up a system where the people with the power get what they want, and the people who are fearful do not.

Mr. Godfrey: Mr. Laughren, the so-called people with the power--I really am not fond of the term, but I understand what you are saying--do not see anything wrong with the system as it exists today.

Mr. Laughren: Exactly. That is exactly right.

Mr. Godfrey: The vast majority of people ask me: "Why are you setting up something at all? We think things are fine." If you believe the Gallup polls or the public opinion polls, 80 or 85 per cent of the people say, "Yes, I think it works just great." So what you do is, you design a system for, basically, (inaudible) of those 80 per cent that converted to the 20 per cent, in a system that will serve the 20 per cent but at the same time protect the 80 per cent and the police.

That is the reason why I believe you cannot go out and design a system totally for minorities. I think the minorities have to be considered, but in the totality of the system.

Mr. Breithaupt: Recognizing that they are the ones most likely to (inaudible)

Mr. Godfrey: On, sure; recognizing that they are the ones that are going to be involved. But at the same time your whole key to success in there is the pivotal position of the public complaints commissioner because, if he turns out to be a dud--and I do not believe he will be a dud; I am saying that if by chance the individual turns out to be a dud, forgetting that it is Mr. Linden--then we are all in trouble. We really are in trouble, no matter what system you have devised.

But if Mr. Linden turns out to be able to perform the way I

think he will be able to perform and his enthusiasm, at least from his own personal point of view, forgetting how it was done or when it was done, I think the system will be successful. Even then, he himself may suggest some monitoring along the road.

Mr. Elston: I have two or three questions. As you have just suggested, the public complaints commissioner is a pivotal part of this whole process. Would you be upset if the public complaints commissioner were given more freedom in his monitoring or in his supervision of this process? And by that, I mean to direct your attention to sections 14(3) and 14(4)--

Mr. Godfrey: I do not have the bill in front of me--

Mr. Elston: What those really do is to give the public complaints commissioner the discretion to go in early in certain circumstances, regarding undue delay, as you mentioned; and then section 14(4) says that his decision to go in can be then reviewed in a court of law.

Since the PCC is a very pivotal part of this whole program, do you believe it is wise to burden his discretion with these sorts of checks, if you want to look at it in that way?

Mr. Godfrey: Mr. Elston, I think I would prefer, if I had my preference, to go with the bill as such. In the period of time that we all have to monitor it, and I am sure that it is going to be closely monitored by a lot of people, to see how often that is used, I have my doubts that it is going to be used--it will not be used very often. But I think that there is a balance, and whether the balance is here or whether the balance is taking that out, I am not 100 per cent sure, and I think that only experience will tell us that.

I do not believe that the chief of police we have right now is going to go on a constant number of times and take the PCC to court, saying, "You have no right to do it," I think that is probably not in his interest. So, if I had my druthers, I would leave the bill as is, not being one of the sections I would monitor, sir.

Mr. Elston: What do you perceive the PCC's role as being? You have sort of said that, if there were to be a balance, this is one of the areas where you think it should be. Are you perceiving the PCC as being almost a representative of the complainants?

Mr. Godfrey: Oh, no.

Mr. Elston: Would he be balanced by the chief? Is that what you--

Mr. Godfrey: No, no. I see the public complaints commissioner receiving the complaint. The complaint is lodged. The individual, as I understand it, can either lodge the complaint at a police station, the complaints bureau or with the PCC. It then goes through the police complaints procedure, and the PCC has a copy of it.



Action is taken with respect to the complaint. If the individual is not happy, then ne, Mr. Linden, since the individual has been so identified, will review all the matters and make an independent decision, not siding with the police or with the alleged wrongdoing but being totally independent. I do not see him being married to either side.

11:30 a.m.

I have had the opportunity of going down to Montreal and looking at their system; their complaints procedure is totally in the realm of of the police department itself, which I do not think is as good as this.

I have been down to Chicago, where they have a lawyer who is an independent police commissioner and who only acts on complaints involving the use of force. He is paid for by the police department and operates right out of police headquarters.

It is remarkable that these two cities, one in Canada and one in the United States, and both bigger than Metropolitan Toronto, both think they have the ideal system there, and they have designed a system that seems to work.

I think this bill is as good as any I have seen. I think it is paramount that we get on with the job. You could make a change here or a change there, and I guess one could argue the point, saying: "Well, we will monitor it. If you are right we will put it back in, and if you are not right we will leave it out." But I think the bill as brought forward is quite a fair bill.

Mr. Elston: To get back to where we were before you re-endorsed the bill: The role of the police complaints commissioner is as an independent individual, totally independent of the police department and totally independent of the complainant. He hasn't got carriage for any side or whatever. He is an independent person. Why then do we have to have the Statutory Powers Procedure Act applying so that someone can monitor his decision to go in early into an investigation?

Mr. Godfrey: I cannot give you an instance, because there has not been an instance, but there could be an instance where there is a dispute, where the circumstance is not exceptional. For some unknown reason--maybe it is not Mr. Linden; maybe it is Mr. X who has decided he is going to go headlong into it, or there is a public complaints commissioner who sees his role as being somewhat different than what it is meant to be. I do not think this bill is being tailored for Mr. Linden; it is a generalized sort of bill. Where there is that dispute, I think the chief should have that right.

But again, when we review this two or three years up the road, that may be a section we will want to look at. I see your argument, and I don't dispute your argument; what I am saying is that I think there are arguments on the other side as well. I support it the way it is, but I would be prepared to look at it in the future.

Mr. Elston: As the chairman, I guess you represent the views of approximately 2.2 million people. I think that is what you indicated.

Mr. Godfrey: I am sure I don't speak on behalf of all 2.2 million.

Mr. Elston: No. But you said that you represented that.

Mr. Godfrey: The Metropolitan Toronto council.

Mr. Elston: That's right. Can you tell me that the majority of those individuals are against an independent inquiry procedure?

Mr. Godfrey: Let me answer it this way. I think the majority of the members of the Metropolitan Toronto council support a process as close as possible to the one outlined by Mr. Maloney in his report of 1974 and 1975 which they paid for.

Mr. Elston: Have you restudied it again in 1981 in the light of the developments?

Mr. Godfrey: I think they would be equally supportive, because we have had a number of opportunities--

Mayor Flynn: It has been ongoing.

Mr. Godfrey: It has been ongoing. I think during almost every term of council the item has been up, because there has always been an incident that has come up which reiterates--back in February of this year, after an incident involving the Metropolitan Toronto police and the homosexual community, we had a long debate in the Metropolitan Toronto council in which they rejected a public inquiry but again endorsed the concept of a public complaints commissioner unanimously, I think, at that time.

Mr. Elston: I don't think there is a problem with the concept of the public complaints commissioner; it's in terms of his status. Since 1975, though, I take it that your organization, both the commission and the council, would probably agree with the fact that social conditions in Metro Toronto have changed.

Mr. Godfrey: Sure. That is why we have constantly reiterated our position, because things change, attitudes change and political positions change.

Mr. Elston: You have basically said what was said by several of the community groups who appeared before us. They indicated they had reviewed the Maloney report at the time it was done and that the conditions have changed to the point where maybe now something different should be put into position. But it is your position that you do not want to see too many changes in that stance, is it?

Mr. Godfrey: I think, in fairness, this bill was designed probably when the Solicitor General met with all the mayors in 1980. The bill was not too dissimilar. I don't have it

here to compare word for word, so there may be some changes, but I do not believe that in the time span between 1980 and 1981 there have been significant changes that would make the agreement between the then six mayors of Metropolitan Toronto any different from what it is now.

Mr. Elston: All six mayors are now in agreement with this bill?

Mr. Godfrey: There has been a change of one mayor in one of the municipalities. The former mayor attending the meetings was supportive of the concept that Mr. McMurtry indicated he was going to bring forward which I believe is fairly close to this.

Hon. Mr. McMurtry: You are talking about Mayor Sewell?

Mr. Godfrey: Yes. That is his name.

Mayor Flynn: You are talking about John Sewell, not mayor.

Mr. Elston: Do you know something we don't, Mr. Solicitor General?

Hon. Mr. McMurtry: I just know that the former mayor of Toronto did meet with my advisers and indicated support for this approach. I am talking about the initial investigation done by the police department with the monitoring.

Mr. Elston: I have just a couple more short questions. I think you alluded to something that has been brought up time and again; that is, the possibility of difficulties with the investigation being conducted by independent people, that it may not be done as well as it will be done by the police. Do you have any information that leads you to believe that to be so, any factual material that you can bring to the committee?

Mr. Godfrey: Again, I have to reflect back, Mr. Elston, on what Mr. Maloney had indicated in his report, based on his investigations where they have tried the total citizens' review board or citizens' review committee. He has indicated that has failed, and he gave the reasons for that in the report.

I would venture to guess that even the investigators Mr. Linden hires probably will have some training in policing to do a proper investigation. For instance, if I were hired to be an investigator, I do not think I would be too good an investigator. I could try to be as independent as possible but, not having experience in the investigation field, I would be somewhat handicapped.

Mr. Elston: So that is your perspective for saying that the investigation may not be conducted as well?

Mr. Godfrey: I think that is part of it.

Mayor Flynn: Not only that, but the police have a terrific habit of investigating their colleagues more thoroughly



than anybody else. They have direct access to the file and direct access to a side comment that is not on record so that they can get down to the nitty gritty of a situation.

Mr. Elston: Supposedly, though, an independent investigative team under legislation also would have access to those in the spirit of co-operation which all these projects would have to undertaken.

Mayor Flynn: With respect, they would not be able to get the nuances or the aside comments that might be made and that would be of assistance to an investigator.

Mr. Elston: Is there then any benefit in having an independent investigative team come on the scene 30 days after the original complaint is investigated, keeping in mind that they are not going to be able to do as thorough an investigation?

Mr. Godfrey: I believe they will do as thorough an investigation.

Mr. Elston: That sort of underscores the reason for-- part of the logic then sort of follows, why not have them from the start?

Mr. Godfrey: Let me try to elaborate my point. I believe that at least 90 per cent of the complaints will be satisfied between the police and the public themselves.

Mr. Elston: So it really has nothing to do with the quality of the investigation at all?

11:40 a.m.

Mr. Godfrey: Oh, I think it does somewhat. I believe that 90 per cent of the complaints themselves will be solved between the police and the public. I think that the police will know that if they cannot resolve it, it is going to go somewhere else and there will be a sort of magnetic force on the police and the public to resolve their difficulties between them.

I think the majority, as indicated in other jurisdictions, will be solved that way. For those that are not, Mr. Linden will have independent investigators who I believe will have probably some form of policing experience. It may not be the Metropolitan Toronto police, but some sort of policing experience; it may be the RCMP, it may be private, it may be OPP, it may come from a number of sources, it may come from out of province.

I believe they will have total access to all the files. They will have a copy of the initial complaint. And if the individual is not satisfied, they will be able to come to their own conclusion of whether the initial investigation was a fair and proper one.

Mr. Elston: I have one more comment. The police association, when they addressed this committee, indicated to us that what I suppose would be described as the magnetic force that

brings people together--knowing that the police will have another way to go if you want to do it that way--could be developed if certain protections were built into the bill for the police. That is, if they agreed to an informal resolution of a problem, even when an independent investigator was involved, if that was not marked on the personnel record then they would be happy and content to deal with the independent investigators. They, in fact, would be co-operating with them.

Mr. Godfrey: Again, when I talked about everybody looking at it from their own perspective, I think in some cases even the association is naturally going to look at it from its own perspective and in protection of its own membership.

Mr. Elston: It showed a willingness to co-operate, though, in dealing through the process.

Mr. Godfrey: I think you are going to find that, no matter what the Legislature decides, the association will be totally co-operative with whatever comes up.

Mr. Elston: So you are not as fearful as the Solicitor General may be that, if there are amendments made to this bill, co-operation may be hard to come by?

Mr. Godfrey: That depends on the amendments.

Hon. Mr. McMurtry: That is right. That is exactly what I say.

Mr. Godfrey: One cannot make such a carte blanche statement. It depends totally on the amendments. I think the association is watching this procedure very closely. I think it is important we have their co-operation.

Mr. Chairman: Mr. Williams, one short question. We have the next witness waiting patiently.

Mr. Williams: Very quickly, Mr. Godfrey, I meant to ask you this earlier. With regard to the composition and appointment of the board itself, in general are you satisfied with the structuring there, with one third police commission, one third people trained in the law and one third appointments (inaudible) and, specifically, what mechanism would be set in place with regard to your responsibility as a--

Mr. Godfrey: Metro council appointments?

Mr. Williams: Yes. Given the fact that a lot of the people coming before us were fearful that that one-third group that you would have responsibility for appointing would not give a broad spectrum of representation across the city.

Mr. Godfrey: It would be our intention to handle appointments to this board in the same manner that we handle appointments to all other boards and commissions. We would put an ad in all daily newspapers as well as a number of the ethnic newspapers indicating that the metropolitan council is

entertaining appointments to this board. At that time we would get all the applications in in writing; there is a form they fill out. We then have a nominating committee. The nominating committee has one representative from each municipality in Metropolitan Toronto. They go through the list of all the names and pare it down to a number they choose to interview.

Based on the interviews they do, they recommend either five or six, or whatever number there are, to the metropolitan council. That passes through the executive committee, and no doubt there will be suggestions that Mr. X or Ms. Y or Mr. Z was left off, has great abilities and names are substituted, and then there will be a vote of the metropolitan council.

Mr. Williams: Thank you very much.

Mr. Chairman: Thank you very much, gentlemen, for--

Hon. Mr. McMurtry: I would just like to make one point. I would like to thank the chairman and Mayor Lastman and Mayor Flynn for the assistance they have given us in the development of this legislation, the assistance of knowing their communities and of consulting with their communities in the spirit of co-operation that has prevailed in the development of this legislation which was very much as a result of very extensive negotiation with the chairman and the mayors, and we thank them for coming to be with us today.

Mr. Godfrey: Thank you, sir. Thank you, Mr. Chairman, and I thank the committee for allowing us the very generous amount of time you have given us this morning. I think you have been most fair, and I respect the individual opinions of the various members. Thank you very much.

Mr. Chairman: The next witness is Judge Philip Givens, chairman of the Metropolitan Board of Commissioners of Police. You have no brief; is that right?

Judge Givens: No, sir.

Mr. Chairman: Fine. I would not expect one from you. You kindly come at our request, and I do thank you for coming and rearranging your schedule to be with us this morning.

Judge Givens: Mr. Chairman, I have been in this room many times but always before as a carver not as a carvee.

Mr. Chairman: Sir, would you carry on, please. Address us as you please.

Judge Givens: Mr. Chairman, I understand that a couple of members want to ask me some questions about something I was supposed to have said some time ago having to do with complaints.

Mr. Chairman: Yes. You have no particular statement to say. You are simply appearing to assist us with answering questions.



Judge Givens: The only statement I would have to make, Mr. Chairman, is that the members of my commission who appeared prior to me support the bill, not as being a bill that is the acme of perfection but certainly as being a bill that we support as being fair and equitable and that should be put in place, that should be passed as an act and, since this is a pilot scheme in any event, that time and experience will indicate if, as and when it should be amended.

That is the way all the important legislation of this province in the past, going back to the fair employment legislation which was model legislation for which this province was known all over the world, was put in place and improved upon over the years and stands as a beacon of light everywhere in the world. That was the precursor of events. That is how it was done, and is the way this should be done.

If, as I say, time and experience indicate that amendments should be made, they should be made. However, if we wait until every "i" is dotted and every "t" is crossed, or until 100 per cent of the population is satisfied, we will never have legislation in place.

I say with the greatest respect that I think this bill has been too long in incubation and that action should be taken. Having myself been in the position that you gentlemen are in this Legislature, that action should be taken as soon as possible to report this bill into the Legislature.

That is my opening statement. Subject to that, I am here at your disposal to answer whatever questions you wish to ask of me.

Mr. Chairman: Thank you, Judge Givens; Mr. Philip.

Mr. Philip: Judge Givens, we appreciate your appearing on such short notice. I think that perhaps a way of setting the stage for some of the questioning would be to quote you to yourself on a matter that I think is appropriate in the deliberations at the moment.

In the House of Commons debates of October 30, 1969, you said: "Perhaps it is because the large city is such a recent phenomenon of civilization that we do not yet know how to cope effectively with the range of problems to which it has given rise. It is a phenomenon which is now posing urgent challenges and cannot be ignored." I think that members of all sides would agree with that statement. One of the things that we often find ourselves in debate on in committees like this is exactly how to come to grips with this new phenomenon that you talked about in the House of Commons over 10 years ago.

11:50 a.m.

Judge Givens: I am so highly flattered that you should have gone back to the speech I made in the House of Commons, so many people forget that I was even there, including my friend Mr. Pierre Elliott Trudeau. It is a good way to start. I think you are setting me up for something.

Mr. Philip: I never set you up when you were in this House. Why would I do it now, Judge Givens? Because of your importance in the whole policing matter in the city, I think it is important not only that we understand what your views are but also that we explore with you any insights you might have for the committee because of your experience.

I would like, therefore, to refer you to a Globe and Mail article of September 14, 1979, written by Arthur Johnson. Basically, he starts off by saying that Attorney General Roy McMurtry plans on establishing this legislation and then he says:

"Philip Givens, chairman of the Metropolitan Board of Commissioners of Police, commented that Metro must not be singled out for the creation of procedures unlike those planned for the rest of the province. 'Hatred for Toronto is the only unifying factor in Canada right now', he said in the interview. 'Special legislation would only isolate Toronto even more. Any legislation should be universal. It should be workable in other places in the province as well.'"

Are you still of that opinion and does this bill, in your opinion, go contrary to those views you expressed in 1979?

Judge Givens: I have reconciled myself to the fact that Toronto, as a metropolitan area, is a unique microcosm of any large city in the whole of Canada and that perhaps it is the better part of wisdom that if there should be a pilot scheme, an experiment--whatever synonym you wish to use--perhaps Toronto is as good a place as any in which to have a pilot scheme.

With respect to my other philosophy about Toronto folks and about the country--

Mr. Philip: That is not necessary.

Judge Givens: --in my more facetious moments I have felt that way both in this Legislature and when I sat in the House of Commons. But I think exploring that private philosophy of mine could go on for the rest of the afternoon and it wouldn't be fruitful in helping you make up your mind about this.

Mr. Philip: You are saying that while initially you had some anxieties about a Toronto-only bill you have now reconciled those anxieties.

Judge Givens: Mr. Philip, I think that if this bill is successful here, if it works well in Toronto, it will probably be a pattern for a universal bill throughout the province eventually in any event. This bill is undoubtedly being watched throughout the province, as you probably know.

I sit on the municipal police governing authority, which has on it the representatives of police commissions throughout the province. Even though this bill is to apply to Metropolitan Toronto, I can assure you there is a great deal of interest on the part of those association representatives who are watching this very carefully.

Mr. Philip: In September 15, 1979, there is an incident which you expressed concern with and which is dealt with, I believe, in the bill. I just want to ask your comments about that. Do you have a copy of the bill before you?

Judge Givens: No, sir.

Mr. Philip: Can the clerk provide him with a copy?

Judge Givens: There is one here. Thank you.

Mr. Philip: I would refer you to section 19(10). Perhaps I can give you just a minute to look at that before I ask a question because it is a matter that you in the past have expressed some concern about in relationship to another matter. I just want to ask you about it.

On September 15, 1979, you were talking about a procedure for handling complaints against the police. A lawyer from Metropolitan Toronto legal department had said he thought the association had some cause for concern--he is talking about the police association. As chairman of the Metropolitan Toronto Board of Police Commissioners, you said:

"The commission had believed that a policeman's report could not be used against him until a recent Ontario Supreme Court decision contradicted that belief. In that decision handed down in July, Mr. Justice Peter Cory refused to overturn another judge's decision ordering the police complaints bureau to produce reports filed by policemen concerning a complaint."

Basically, you were expressing concern about that at that time. Do you feel that section 19(10) handles the concern you had expressed at that time? Is your concern now overcome by the present bill or are there any other changes that you would recommend to the committee in this regard?

Judge Givens: No. I think that this subsection would handle it satisfactorily.

Mr. Philip: If I may ask the Solicitor General, was it in response to this concern expressed by Judge Givens that this section was drawn up? Are you satisfied that this handles this particular problem that was expressed by Judge Givens in September 1979?

Hon. Mr. McMurtry: That is my belief, yes. I don't recall ever discussing it with Judge Givens directly, but this was a concern certainly of the association.

Mr. Philip: I wonder if I can quote to you something else. I think all of those quotations which I have given to you so far have been what I would call constructive on your part in a very positive way. I don't always necessarily agree with everything you have said, but I think some of your statements have in the past been constructive. I would now like to deal with one that I have a little bit more problem with. It is taken from July 2, 1980--I believe it is the Globe but there is no writer's name on this and therefore I am not sure. It says:



"The role of the chairman of police commissioners of Metropolitan Toronto since the beginning of the present tensions in race relations should be under careful scrutiny by the responsible minister," said Archdeacon Arthur Brown, rector of St. Michael's and All Angels Church on St. Clair Avenue at Witchwood Avenue. He was reacting to the remarks made at a meeting in Beth Shalom Synagogue on Thursday night by Mr. Givens who complained that police critics are 'people who are paid to foment trouble.'"

I would ask you two questions. One is were you quoted correctly as saying that people who are critical of the police are "people who are paid to foment trouble." If so, what did you mean by that? Lastly, do you feel that that is a constructive statement in the light of your present position?

Judge Givens: Answering the latter part first, probably it wasn't a constructive statement to have made. What I had in mind was that there are a number of people who are in positions, such as universities or various jobs, who have sort of an interest in the militant aspect of their remarks and are repeatedly in the forefront in their negative criticism of policing in the city, no matter what we do or what we get involved with. As a police group or body, whether it is the police force or the police commission, there is nothing we can do, as far as these people are concerned, that is right.

I forget what was involved at that particular time, but it was at the height of a torrent of criticism that I made this remark. I just felt that some of these people who are always in the forefront, castigating us, were fishing in troubled waters and going out of their way to voice these criticisms.

12 noon

Mr. Philip: Sir, if I am paid, then I am paid by someone. I ask you who are these people paid by?

Judge Givens: I take it the people they are employed by.

Mr. Philip: Who are they employed by?

Judge Givens: In some cases they are employed by universities; in some cases they are employed by various organizations. What difference does it make? They are employed by bona fide organizations. Their employment is not for the purpose of fomenting trouble. I am not suggesting that these people are subversive, but I feel that they feel themselves motivated, as part of their duties, to be strident in their militancy.

Mr. Philip: Sir, I found the words, "people who are paid to foment trouble," very reminiscent, if you like, of some of the statements that were made by certain US politicians at the time that Martin Luther King and other people rose to prominence. I find them even reminiscent of some of the statements that were made by certain politicians in the 1950s, and I find that discomfoting, particularly coming from a man with your background and affiliations. I now hear you say you are not suggesting that these people are in any way not loyal Canadians or paid by any outside agencies, as was indicated in the case of the 1950s in the States, or even in the Martin Luther King days.

Judge Givens: If I were you, I wouldn't go too far with analogizing my statements or me with the elements that you are talking about. I don't think any analogy would be apt.

Mr. Philip: I find that comforting at least. We talked earlier with Mr. Godfrey, and I am sure you saw the interchange that I had with him. I don't know whether you were there right at that time or maybe came in later.

There are a number of groups that are connected with an organization called Citizens' Independent Review of Police Activities. Some I am personally familiar with. I have used their services, or they have worked with me in carrying out my duties as a member of the Legislature--the Quaker Committee on Jails and Justice, the Metro Tenants Legal Services, to mention only a few.

There are other groups that I have had less contact with, but which I understand are responsible community groups. Religious Leaders Concerned about Racism and Human Rights appeared here, and very responsible clergymen who were ministers or priests in the Anglican Church, the Roman Catholic Church, the United Church or the Baptist Church. Yet I find that in the Globe and Mail article of July 14, 1981, you are quoted as saying that this group was encouraging a system of espionage and sabotage on law enforcement officers who are sworn to uphold the law.

First, I assume you will admit that those groups are responsible community groups from your interaction with them?

Judge Givens: Yes, some of them are.

Mr. Philip: Are you suggesting, as Mr. Godfrey appeared to suggest, that somehow they are misguided, that they are part of this larger group that is a vigilante group?

Judge Givens: I am not suggesting anything. I think that when a group like CIRPA get together, they gather unto themselves groups. It is like signing a petition. A standard is planted and various groups flock around them, whether they are really fully familiar with what is intended or not. I don't know what you want to read into that. They are not operating under any colour of law. They don't have any legislative backing or any basis for their operations. They are going to conduct investigations on their own without any kind of legislative background. They are going to investigate judges. They are going to snitch on--that is a bad word--inform on people. What is their justification for that? On what basis are they going to do this?

You talk about Mr. Godfrey's opinion. There were editorials in respectable organs of opinion, and I think of the Star. I believe the Toronto Sun editorialized against CIRPA. So it is not only Mr. Godfrey who looked askance at this particular group. I looked askance at them.

Why, at this time when you gentlemen are sitting here, discussing in anatomical fashion this particular bill, should this group just evolve suddenly? For what purpose? What is the point of this group getting together for this purpose? I don't see it at all. I think it is counterproductive and that it is destructive. I see no purpose for it at all.

Mr. Philip: You would admit, though, that citizens have a right to form organizations to protect their interest in whatever way possible, as long as they do not become a vigilante group which, to me, would be illegal.

Judge Givens: Yes. I am for free speech and free assembly, but I think it is counterproductive under the circumstances for them to set themselves up at this particular time.

Mr. Philip: Are you denying that you ever used the words "vigilante group" against these people?

Judge Givens: No, I am not.

Mr. Philip: You did use it.

Judge Givens: Yes, because I think they have the aspects of being vigilantes. They are doing this thing on their own.

Mr. Philip: Would you define for me what a vigilante group is in your opinion?

Judge Givens: In my opinion, a vigilante group is a group that acts without colour of law, without colour of right, without any justification, simply going off on their own to take judicial actions which they have no right to do. They are out shooting for themselves. They are in business for themselves to operate in a judicial fashion, which they have no right to do, without colour of right--

Mr. Philip: So the key then, to being a vigilante group--

Judge Givens: Excuse me. They are an extralegal group supposedly operating for legal purposes. Who gave them the right to do that? Only you people have the right to do that.

Mr. Philip: The key then to being a vigilante group, in your opinion, would be that either judgements or quasi-judicial decisions are made by the group. Is that the key that makes a vigilante group as distinct from a facilitator group, if you like?

Judge Givens: Not only judgements. They are going to be making character assassinations as well. They are going to be making statements. They are going to be attacking people. They are going to be informing on people. They are going to be making allegations, unproved allegations. I think it is dreadful.

Mr. Philip: Have you read the statement by CIRPA or have you read the Hansard of the--

Judge Givens: I am like Will Rogers. All I know is what I read in the newspapers, and I believe everything I read in the newspapers.

Mr. Philip: Yet, with only what you have read in the newspapers, you have accused a group of people, a citizens' group, some of them highly respected in the community, of being a vigilante group.



Judge Givens: I think some of the highly respected groups that you named should have known better than to associate with some of the other groups that are involved in that group, because some of the groups that I know of are people who always in the forefront and in the vanguard of criticizing any kind of police activity in this town. They have gone overboard on many, many occasions, unjustifiably so.

Mr. Philip: Therefore, sir, in your mind, these groups are guilty because of association.

Judge Givens: Some of them, yes. I think they should have shown better judgement than to be associated with these groups. They should avoid it until these discussions have evolved and until they have seen how this act was going to work out in practice before they did that. They showed bad judgement; that is all I can criticize them for. But, as far as the legal right for them to do what they are doing is concerned, it is a free country.

Mr. Philip: That is the kind of rationale, with the greatest respect to you, sir, that was used in the 1950s in the States, and I find it frightening.

Judge Givens: Mr. Philip, I have been in public life for 30 years. I have been elected to every office in this country and I have a right to my opinion just as you have, sir.

Mr. Philip: I have just expressed mine to you.

Judge Givens: And I have expressed mine.

12:10 p.m.

Mr. Philip: You have said that the group was encouraging a system of espionage and sabotage. Can you give us any concrete evidence of that? After all, sir, you have tried them in the newspapers.

Judge Givens: No. I don't think that they have as yet but, judging from what I have read that they are going to do, they are embarked on that kind of activity. That is the way they expect to make their mark.

Mr. Philips: What you should have been quoted as saying is not that the group was encouraging a system of espionage and sabotage of law enforcement, but rather that in your opinion you thought they were about to. Is that correct?

Judge Givens: Well, my tense may have been wrong but my expectations will be borne out in the future, if they continue along the lines they have set for themselves.

Mr. Philip: So, without ever reading their objectives, without talking to any of those groups-- Did you consult with any of the groups before you made your statement?

Hon. Mr. McMurtry: Excuse me, Mr. Chairman. I realize I am not a member of this committee but I am a member of the Legislature. A member of this committee has asked Judge Givens to come forward to engage in a debate with him that, in my respectful view, has nothing whatsoever to do with this legislation. It has to do with a group that opposes this legislation. If we are going to summons witnesses to come forward to debate with members of the committee in relation to a role of some group in the community which may or may not support the legislation, I think it may be coming very close to abuse of the process. Judge Givens doesn't need anybody to come to his defence. As he said, he has enjoyed 30 years of very distinguished public service. I just don't know what all this has to do with the bill.

Mr. Philip: I assume that was a point of order even though the Solicitor General is not a member of the committee. Therefore, I will answer the point of order that was really out of order. As a former chairman of this committee, I learned how to do these things.

I would respectfully submit, Mr. Chairman, that what we are dealing with is, because of Mr. Givens' high office as chairman of the Metropolitan Toronto Board of Police Commissioners, because certain groups have expressed their dissatisfaction with the bill to the point where they have even formed another group to try to facilitate--

Mr. Chairman: Mr. Philip, you are not addressing yourself to the point of order.

Mr. Philip: I am, if you would give me a few seconds. Of course, being a good chairman, you will at least hear out my reasons. Since there isn't a point of order, then I won't bother answering it, if that is your point. I will continue my questioning.

Mr. Chairman: If there is no point of order, the chair will at least express an opinion. I believe Mr. Philip is in order so long as he restricts himself to the comments that Judge Givens gave and is not off on a fishing expedition.

The judge was invited as a result of the committee's deciding by consensus that it would like to hear from him on the topic. But it only came up as a result of the reference to his statement. So I do believe, Mr. Philip, you should keep yourself a little closer to those statements and the original reason for Mr. Philip being invited.

Mr. Philip: I wasn't invited; it was Mr. Givens. I haven't been appointed police commissioner yet.

Mr. Laughren: It could happen, you know.

Mr. Philip: I doubt it very much. The government saw to it that I was no longer chairman of the committee, even though I was replaced by an excellent chairman, I might add, so I doubt very much they are out to appoint me to do anything else, at least not for three years.

I would like to read to you some quotations from various newspapers because they do relate directly to your attitude, sir. Before I do that, I would like to ask you about a decision which was made back on February 27, 1981. I would refer you to section 19(17). As I recall on that occasion you were in disagreement with a motion by Paul Godfrey and I believe Etobicoke Mayor Dennis Flynn concerning payment of legal fees of two policemen found guilty of using a forged affidavit. I find it interesting that under the subsection I just quoted it says: "The Metropolitan Board of Commissioners of Police may in such cases, and to such an extent as it sees fit--"

Judge Givens: I am familiar with the section.

Mr. Philip: I am just reading it for the record. To continue: "pay any legal costs incurred by a police officer in respect to a hearing conducted by the board in an appeal under section 20." Are you still of the opinion that this section is inappropriate? Is this section inappropriate in light of your earlier comments concerning the taxpayers' \$18,000 which was paid out in legal fees?

Judge Givens: No. My answer to your question is that I consider this section most appropriate. The section is permissive. It says "may." We, the members of the commission, make a recommendation to Metropolitan council. Council in its wisdom can determine whether or not it should pay a police officer's fine of this kind or his legal expenses, and it should be left that way. My answer to your question is that I am fully in approval of this section and the section should be so.

We did differ on one point. The records of these two police officers, particularly one of them, were the most exemplary I have ever seen in all the years I served on the commission. Please remember I not only served on the commission the last four and a half years but I was on the commission when I was mayor of Toronto for three and a half years. These were remarkable records. They read like records you would set up as a symbol or model for what you would want a police officer to be.

There is no question these two police officers were found guilty. What they did was wrong. What I addressed myself to as a member of the commission was the degree of punishment that these two officers should bear, having been convicted. The question was how great a degree of punishment should these officers, along with their families and children and so on, have to carry on their shoulders for the rest of their lives. That is the sort of question that judges address themselves to every day in the week.

Having regard to all the circumstances in the case, I felt it called for the kind of charitable approach, if "charitable" is the right word, the kind of forgiving approach that these officers should not have to go into debt because of what they had done. What they intended to do was to punish a murderer. They did it wrongly and they were convicted and punished. I make no excuses for having taken that position. As it was, my judgement was not listened to and the democratic process evolved the way it did. But I make no excuses for the position I took in that case, Mr. Philip.



Mr. Philip: Therefore, you would not put any restrictions under this clause of the bill in cases where the person was found guilty of an offence?

Judge Givens: No, and may I say parenthetically, Mr. Philip, I have seen other cases where police officers were acquitted when I would like to have imposed a greater punishment but have been unable to do so because they were acquitted on legal technicalities.

Mr. Philip: But you would have found yourself in exactly the same position had you been in a position of a judge in awarding costs?

Judge Givens: Yes.

Mr. Philip: You admit that is the system and there is nothing that can be done about it?

Judge Givens: Yes, and one has to abide by the system. Under section, 24(6), we have this permissive option and I think it should be kept so. If you make it a firm situation, then judgement goes out the window. You are fixed into a procrustean bed and you have no option at all. I would rather have it this way.

12:20 p.m.

Mr. Philip: How would you answer the citizen out there who says that if he is found guilty nobody pays his legal fees? Why should a person who is obtaining his salary from the civic purse obtain his fees if he is found guilty? How would you answer that person?

Judge Givens: For two reasons. The police officer is in a unique position, unlike the ordinary citizen on the street, by virtue of the kind of service which he performs. He has to make snap decisions. He finds himself in very difficult positions from time to time in the performance of his duties, which is unlike the position of an ordinary citizen who may get himself into trouble. He may be protecting somebody or doing something on behalf of the citizenry.

The second reason is collective bargaining. That is a situation that has been bargained out between the police association and the commission. Surely, Mr. Philip, you would not have that otherwise, having regard for the factors involved in the collective bargaining agreement. That was bargained out between the association and the commission many years ago. That is like the laws of the Medes and Persians--and you ain't going to change that.

Mr. Philip: Maybe Mr. Hilton can shed some light on this. What would happen in an instance where an auxiliary police officer committed an indiscretion against the citizen? How would he be covered? Would you pay his legal fees? Here are all these citizens who are giving all of this time and not being paid for it and often taking on the responsibilities of police officers. How would they be affected in your payment?

Judge Givens: I am glad you mentioned Mr. Hilton's name. Would you prefer to have him answer the question?

Mr. Hilton: I would sooner have you answer that.

Mr. Philip: Does someone want to answer the question?

Judge Givens: Mr. Chairman, Mr. Philip has asked a question. Does it really have something to do with the bill?

Hon. Mr. McMurtry: I do not think auxiliary police officers are covered by this legislation.

Mr. Philip: Yet these are the people who are driving around in police cars and are often in the kind of tense family situations that have resulted in other complaints.

Hon. Mr. McMurtry: No. You, as is your habit, either deliberately or otherwise, totally misunderstand what the actual situation is. The auxiliary police officers have a very limited role to play in this community. They are not directly involved in crisis situations, except when they are directly under the supervision of a qualified police officer. They do not carry arms and their role is not to be involved in these situations. The complaints against auxiliary police officers over the years, to my knowledge, have been infinitesimal because of the role they play.

Mr. Philip: You have just repeated what I have said, that they are travelling with police officers and that they are often, or can be, in the same kind of situations.

Hon. Mr. McMurtry: It is unusual.

Mr. Philip: In asking the question, I would expect that at least the Solicitor General for once would put away his condescending attitude and answer the question.

Hon. Mr. McMurtry: You make it very difficult.

Judge Givens: Mr. Chairman, with the greatest respect, I would like to answer the question in a negative way. I would assure Mr. Philip that the auxiliary police officers are not uncovered. I am not trying to be facetious. By that I mean we have legal opinions which have been given to us by a corporation counsel, and our corporation counsel is the same counsel who serves Metropolitan Toronto. As the Solicitor General has indicated, these opinions say that where the auxiliary personnel work under the supervision of police officers there are circumstances under which the police constables are considered to be working almost in the same capacity. In the one or two instances where problems have arisen, the auxiliary police officers have been looked after. We have insurance policies based on these opinions.

Mr. Philip: They have been covered?

Judge Givens: Their situations have been looked after and there has been no problem. I would rather not state a hard and fast rule because there is none for the reasons the Solicitor General has indicated. I think we should rather not pursue this thing any further publicly because (inaudible)--

Mr. Philip: What I hear you telling me is that, in your opinion, they are not covered by the bill but that some other consideration might be given to them if they happen to get themselves into (inaudible).

Judge Givens: There is an interpretation under the bill which does partially cover auxiliary officers under proper circumstances. I would not be too concerned about it. They are satisfied.

Mr. Philip: Would that be the opinion of Mr. Hilton?

Mr. Hilton: I think so. I am reading the first section of the act, subsection (e): "A police officer means a police officer on the Metropolitan police force." I know nothing about the auxiliary support Judge Givens has spoken about, but it would seem to me they are not covered by this act, as now defined.

Mr. Philip: Perhaps Mr. Hilton can bring back--we have had two different views expressed, one by the solicitors who have been contacted by Judge Givens, another--

Hon. Mr. McMurtry: That is not so.

Mr. Chairman: Excuse me, Mr. Minister. No, they were not contrary to each other. Judge Givens did not say they were in the act, whereas Mr. Hilton said they were not in the act. They are not opposed positions. But as to the affirmative part of your suggestion, will Mr. Hilton undertake to find out what information he can and report back to the committee?

Mr. Philip: I would simply ask Mr. Hilton to find out what protection, if any, is provided to auxiliary police officers under this act.

Mr. Hilton: Under this act?

Mr. Philip: Yes. How they are covered under this act, if at all.

Mr. Kennedy: Supplementary, Mr. Chairman: Have there been, Judge Givens, any complaints against the auxiliary policemen? Are they that far up front that they may be involved in these scenes?

Judge Givens: No. There have been a couple of cases involving traffic matters, but they are never involved in domestic calls, burglaries or break-and-enters or shoot-outs or anything like that. They are down at the CNE after a football game or before a football game in a crowd control situation. They never, as a general rule, get involved in things of danger.



Mr. Philip: My recollection, Judge Givens--and we might consult the newspaper reports of it--is that in the recent tragic death of a police officer there was an auxiliary police officer accompanying him at that time was there not?

Judge Givens: The Cummins case?

Mr. Philip: Yes. Was there not?

Judge Givens: Just a week and a half ago? Not to my knowledge.

Mr. Philip: As I recall from reading the press, there was. We can check that out.

Judge Givens: Not to my knowledge. But if you wish to get the position on the auxiliary police officer situation, Mr. Roly Parker, the corporation counsel of Metropolitan Toronto, can bring you up to date on that. I think you will be satisfied.

Mr. Philip: I appreciate that and will be contacting him.

Mr. Hilton: Mr. Chairman, I have written down here the question that was put to me by Mr. Philip--and I may not have it exactly right. The question as I have it is, "What protection, if any, is supplied to an auxiliary policeman under this act?" I already pointed out that as far as I know--and the minister did ahead of me--there is no protection given to auxiliary police officers under this act. I went farther by pointing out that "police officer" is defined under section 1(e) of the act, and my view is that does not include an auxiliary police officer. I submit that I have nothing to bring back to the committee beyond that which I have already said.

Mr. Philip: Did I not hear Judge Givens--and I may check the record to find out--say he had consulted with his lawyers and they indicated that in certain instances--

Judge Givens: No.

12:30 p.m.

Mr. Philip: Oh, I did not hear him say that. Then I'm sorry.

Hon. Mr. McMurtry: He said they had insurance matters.

Mr. Philip: Just with respect to insurance matters?

Hon. Mr. McMurtry: That was my understanding.

Mr. Philip: Okay.

Mr. Chairman: I think he used the expression, "they were taken care of."

Judge Givens: That's right.

Mr. Chairman: Mr. Philip, do you have more questions? The clock is past 12:30.

Mr. Philip: I have quite a few more questions. The Toronto Sun on April 9, 1980, stated, "Metro police commission chairman Phil Givens blames an increase of visible minorities and television news for Metro's racial problems". You are blaming two groups there--the visible minorities and the television news--or is that taken out of context?

Judge Givens: No, I deny that quotation entirely. I would not have said anything as stupid as that.

Mr. Philip: I did not think so, but I thought I should at least ask you to clarify the record.

There is a quotation in the Toronto Star of April 5, 1980, in which Reverend Frerichs, treasurer of the Liaison Group on Law Enforcement and Race Relations, says, "None of the reports have dealt with these kinds of questions, the leadership of the police commission and the philosophical question of what policing is all about in a modern community."

You are reported to have countered with: "We are cops, not philosophers. You can't expect us to sit down and have a God-damned democratic meeting during a shootout of a burglary," which I guess all of us would agree with. Frerichs said, "The Toronto Presbytery of the United Church set up a task force on modern policing about three weeks ago because they were sceptical that Givens would ever initiate that sort of debate on his own." He accused you of being "blindly defensive of the Metro police force and police commission and of fostering a fortress mentality."

The other quotations that have been attributed to you, such as saying that certain groups that happen to have views contrary to that of the government are part of vigilante groups, would lead us to question you about that. Do you feel the groups that are actively opposed to this bill are in some way fostering racial or other tensions in the community? Is that your feeling? Or is it just that we've had a series of quotations that perhaps are spur-of-the-moment quotations that don't really reflect that?

Judge Givens: That is quite a buckshot question you've addressed to me. I don't know what you want me to answer.

Mr. Philip: What I am trying to do is put together the pieces. In all the statements attributed to you, I find nothing of a conciliatory nature towards some of the groups that are critical of this bill. In the interests of cooling the situation down, if you like, or of making for a more harmonious community, I wonder if some such statements might not be forthcoming from you, instead of some of the ones I've just read. I cannot find any others that balance it on the other side.

Judge Givens: Since this bill has been introduced, none of the groups you have talked about has asked me my opinion of the bill. I have not been in discussions with them on the bill. I don't know what you mean by being conciliatory. This bill would be helpful to them.

I realize that some members of the Legislature have a dilemma. On the one hand, there are complaints from the quarters you have indicated, saying they want a certain form of procedure. On the other hand, we say we should have this form of procedure. You have to balance off the weight of evidence, whether the decision that has to be made is to keep certain groups happy or whether you are so satisfied with the nature of the operation of the police force in this city, having regard to its track record over a period of many years, that they should leave the legislation as it is, the way we would like it to be. In the final analysis, it is the public interest that counts.

If you are going to do something that is not going to have the confidence, the trust and the support of the police force involved in the criminal justice system, then it is going to rebound to the displeasure and disfavour of the people it has to serve. If a police officer who has to make split-second decisions on a weekend when he is called out on a very dangerous assignment is going to be worried about who is going to sit in judgement of his action on a Monday morning, there is going to be a momentary diffidence, a momentary apprehension, a momentary reluctance, and that is not going to serve the public interest. These very people who are objecting and protesting may find they will be detrimentally served. It will be against the public interest. I think it would be very undesirable to do that.

The police force of this city is an excellent force. It is one of the finest public bodies I've ever had anything to do with in all my years of public service. I would be very reluctant to tamper with its operation. Sure, they make mistakes and there are people who foul things up, and nobody is more concerned about complaints in this community than I am and those of us who are charged with the responsibility of administering the police force are.

Mr. Williams: Mr. Chairman, noting the time, I would move that we adjourn until two o'clock.

Mr. Philip: I just have a couple more questions, but I imagine other members want to ask questions.

Mr. Chairman: No, you are the only one who wishes to.

Mr. Philip: I just have two or three more questions. I know that Judge Givens has a very heavy schedule and has inconvenienced himself to come here this morning.

Mr. Williams: I move that we adjourn at quarter of the hour.

Mr. Chairman: Will you indulge us another five minutes, Judge Givens?

Judge Givens: I am here at your service, Mr. Chairman.

Mr. Philip: We appreciate that, Judge Givens. No one would disagree that, compared to other jurisdictions, particularly



perhaps to others throughout North America, Metropolitan Toronto police have performed, by comparison, extremely well. But would you agree there are two groups whose support we need if we are to make this kind of bill work? One is the police force, the officers, and the other is the community.

The police association indicated that, unlike some groups in the United States, such as in the Philadelphia situation, whatever the system was, that they are law-abiding citizens and that they will co-operate in making whatever system we agree on work. While they may disagree with some of the things that some of us might like, they at least have not in any way indicated the kind of obstructionism and disobedience, if you like, that was evidenced in other jurisdictions. That is to their credit and shows their maturity.

On the other hand, we have the community groups, and I am sure you cannot name one community group, particularly in the visible minority groups or ethnic minority groups, which is in support of the present system, in support of Bill 68 as it is. I wonder how you can expect the public to have confidence in a bill when none of these groups has shown any confidence in that bill. How do you make a system work when only one side is in favour of it?

Judge Givens: I do not consider that very significant, Mr. Philip, because these groups you keep on referring to are groups that are gathered for the purpose of expressing resentment. They express their resentment against those symbolic groups in a community that are the visible symbols of authority--the establishment. The police are the most visible symbols of authority in the community. The vast majority of people in the community are those who feel--as Mr. Godfrey said before, and I agree with that statement wholeheartedly--content with the way the police operate, generally speaking.

12:40 p.m.

They feel that you, the elected representatives in this Legislature, are very unlikely to do anything that will impede, undermine or jeopardize the operation of the police force, and they do not organize. They have no reason for organizing into groups to express any kind of resentment because they have no resentment to express. People who are satisfied do not organize themselves into groups of contentment. Nowhere can you show me in this great country of ours such groups. The Kiwanis are not going to come here, the Rotary Club are not going to come here, the Board of Trade will not come down here, nor the various organized religions. You talk about the United Church. There are a lot of people in the United Church who disapprove of things that are said by the people who have come down here. They have written letters on various occasions to me with respect to various things that have happened from time to time in the community.

That's the way the situation is, and I would not be carried away by these groups you are talking about. You weigh their evidence and take it into consideration, but that does not necessarily mean you have to submit to that. You have to use your own judgement too, with the greatest respect.

How much weight do you give to that evidence you have heard before you on the part of people who are constantly complaining about the police and have always done so over the years? Other people continually, when they are answering polls organized by various newspapers and other agencies, keep on coming up again with overwhelming support for the way the Metropolitan Toronto police operate in this city.

That does not mean we have achieved perfection--I would be the last one to say that--but we have done pretty well here. Before you jeopardize that situation, because you can make it worse--there is such a thing as improving it, but there is such a thing as exacerbating it as well. This is a very serious thing this Legislature has embarked on now. You can put in a civilian complaints system that can undermine the present process in a very serious way, and I would not want you to do that. I would be very careful about that.

Mr. Philip: I find it interesting that there is the implication that somehow the great silent majority out there is in favour of the bill as it presently stands. Yet I'm sure you cannot name one cultural group that is in favour of this. There are a lot of other groups out there, and not one of them has indicated to either you or the Solicitor General it is in favour of the bill as it presently stands. If they are, we have asked the Solicitor General to produce the hundreds of people out there who are in support of this, and we haven't found any yet.

Judge Givens: Excuse me, sir, Mr. Chairman, through you, there is not a day that goes by--I am out in this community every day in the week and I meet lots of people and I know lots of people--when people don't come up to me, quite gratuitously--I don't ask them--to express their overwhelming approbation of the way they feel the police are operating in this city. I don't solicit these remarks. They don't send me letters. They say, "Hey, Phil, I was thinking of writing you a letter about a certain experience I had, et cetera, but I thought I would wait until I saw you personally and tell you." So I do get these feelings expressed to me.

Mr. Philip: With the greatest of respect, Judge Givens, and this is--

Mr. Williams: Mr. Chairman, with the greatest respect, it is quarter of the hour. We have given Mr. Philip an extra 15 minutes. We should stand by the ruling that we adjourn at a quarter to.

Mr. Philip: Would you not agree there is a difference between supporting the police and supporting an independent review process or an independent investigation? You mentioned polls. Can you name one poll that actually asks that specific question: "Do you support an independent investigation or an in-house investigation?" You ask that question, and I think the majority of the public, even though a majority of us are in support of the police and admire what a majority of the police are doing, would still come down on the other side. Show me the poll you're talking about.

Judge Givens: This legislation gives you the independent review you are seeking.

Mr. Philip: With the greatest respect, it does not.

Mr. Chairman: Thank you very much, Judge Givens, for coming and answering questions. I am not going to apologize for any embarrassment to you because, as you said, you have been around here before.

The committee recessed at 12:45 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
MONDAY, OCTOBER 5, 1981  
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Hennessey, M. (Fort William PC) for Mr. MacQuarrie  
Kennedy, R. D. (Mississauga South PC) for Mr. Andrewes  
Spensieri, M. A. (Yorkview L) for Mr. Wrye

Clerk: Forsyth, S.

Witnesses:

Kalevar, C. K., Member, Continuing Committee on Race Relations  
Libman, P., Treasurer, Board of Directors, Riverdale Socio-legal  
Services



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 5, 1981

The committee resumed at 2:26 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum in place. Mr. Libman is treasurer of the board of directors of Riverdale Socio-Legal Services.

I take it you are presenting a brief on behalf of yourself and Mr. Argue. Is that correct?

Mr. Libman: Yes, on behalf of the board as well.

Mr. Chairman: Do you have a brief?

Mr. Libman: Yes. I just handed it out.

Mr. Chairman: The brief is being distributed right now. Would you carry on please, Mr. Libman.

Mr. Libman: You will see from the brief there are two recommendations in it and there are some others I wish to make verbally.

Just by way of background, the first page deals with our clinic. We do have a community board of directors and I am one of the members of the board and the treasurer. I am also a lawyer in Toronto and practise a fair amount of criminal law. I also represented one of the 16 complainants at the Morand commission on police brutality and represented all the defence lawyers on the evidence with regard to the polygraph. I also host a TV show for Rogers Cable and, since I see my fellow people there, I am just putting a plug in for it.

The first of the two recommendations that are written in the report is with regard to the 30-day period. They feel there should be an immediate investigation. This is on page 5 of the brief.

Mr. Breithaupt: Do you wish to read the brief? You can certainly do that if you wish.

Mr. Libman: I cannot see the point of actually reading the brief. Perhaps I can just read the recommendations into the record. They are more relevant. Starting on page 5, recommendation 1 says section 14(3) of Bill 68 be amended to allow the police complaints commissioner to inquire into and investigate the allegations in the complaint as soon as the complaint is filed.

Then there is a section on the jurisdiction of the Ombudsman and recommendation 2 which says section 23 of Bill 68 should be eliminated so that the Ombudsman would have jurisdiction concerning complaints and also the complaint process.

Then there is a summary of the two recommendations on the last page. In addition, some other recommendations that we would like to present to you deal with some of the sections of the act itself. Section 23 is already dealt with in the brief. Section 26 and 27 we would also like to comment on.

Section 26 deals with the area in which the Lieutenant Governor in Council may make regulations. Our board and our clinic feel that it is much too broad to be left solely in the discretion of regulations and not as part of the act. We are particularly concerned about subclauses a, b, and e. We feel that these should be defined in the bill itself and that they are essential to the bill working. We would like to move clauses a, b, and e into the first part of the bill and have them defined in the bill itself, not left to a regulations which, of course, can be changed without an action of the House and are not open to debate.

2:30 p.m.

We are also quite concerned about section 27, a section which indicates that the bill is to be repealed in three years' time. This is contrary to the usual practice with bills in Ontario. Perhaps it is a desirable thing for a number of bills, but with this particular one we would like the traditional practice of the bill being repealed by an act of the Legislature rather than an automatic repeal.

We are a little bit concerned because in our experience these complaints do drag on for a long period of time and it is possible it could drag on past the three-year period. Members in our area may run into the problem that they are told the act is no longer in effect just as the complaint is being investigated. We would urge that section 27 be taken out completely and that the repeal of the act be dealt with in the usual fashion as for other bills.

The problem about the 30 days is dealt with in recommendation 1. I think the only other initial comment I would like to make is that in the Morand commission report which came out a number of years ago--1976--is a recommendation on page 266 that talks about the need for the independent complaints bureau. It has been five years since then. We feel, and I believe most of the people that have appeared before the committee feel, that this is not the answer, that it is still allows the police to essentially investigate themselves, especially within the 30-day period.

Our clinic was certainly not consulted and we are a community clinic. We exist in the Riverdale area and no one ever asked our clinic either what or any of the users of our clinic felt. We feel that as admirable as it is to have some sort of procedure to investigate the police, other than the complaints bureau, this is not the answer.

I am open to any questions you might have.

Mr. Philip: Mr. Chairman, it is a shame that the Solicitor General only appears to come when we have groups here who are likely to agree with him.

Mr. Mitchell: Mr. Chairman, with respect, we don't need editorial comment.

Mr. Philip: It was not an editorial comment; it was a statement of fact.

Mr. Mitchell: It sure sounded like it, Mr. Philip.

Mr. Philip: I can understand why you have a guilty conscience considering the fact that what I said was the truth.

Mr. Mitchell: Only in your mind.

Mr. Philip: The interesting part of this--there are a lot of interesting parts, but they have been covered in other briefs and I think I made my views known that I agree with many of those points on the other briefs--which I think distinguishes this from some other briefs is the point concerning the Ombudsman.

I am wondering if you are familiar with the Australian system and whether or not you have analysed that? Is that the direction you see it going, where the Ombudsman does have some jurisdiction over this?

Mr. Libman: That is what we are asking. I did have an opportunity to ask Mr. Morand. He was a guest on my TV show in April when we did a show on the Ombudsman for Rogers Cable. I asked him before the show started, off the record, if he would be interested in it. He indicated he would like to talk to the Attorney General about that. That was, of course, before the bill was promulgated.

I think the feeling of the people in our community is that they are satisfied with the fairness of the Ombudsman's office, especially under Mr. Morand, and with the reorganizational changes that he has recently made in the office, and they are satisfied that this would be a public body they would have confidence in.

I think the key note in our brief is that there has to be the appearance of confidence in the procedure investigating the police. It is felt in my community in the Riverdale area that under the present act, even if it does turn out to be a fair procedure, there does not appear to be the appearance of fairness when you have the police initially doing the interviewing. We feel that an independent body, like the Ombudsman's office, would be much preferable. In fact, in our brief we listed it really as the alternative to the bill. I think the answer to your question is yes.

Mr. Philip: So you would see the Ombudsman as having charge of the investigators who would investigate the complaint. Then the Ombudsman would obviously make recommendations and any disciplinary action or any changes would be exercised by the police commission or by the chief police. Is that right?



Mr. Libman: It would be by the commission, plus of course there is the remedy that the individual complainants would have civil remedies and possibly criminal remedies if they wish to press a charge on it.

Mr. Philip: So you would not give the Ombudsman any exercise of powers that he does not now have? In other words, all that he could do would be to investigate and make recommendations. If the police department decided to act on those recommendations, they might choose to do so. If not, they would choose not to do so as well.

Mr. Libman: That is correct, but he also has the right, under the act, to report the matter to the Premier and, of course, this is made public in his report. There are civil and criminal remedies as well flowing from any investigations he might carry out. Also, he does have the investigative staff now; so it is a body which is in place and could immediately start.

Mr. Philip: There is where I have some problems, and maybe you will help me or maybe other members of the committee may have some ideas on this. I find it an interesting idea, but under the Ombudsman Act, as it now stands, he only investigates alleged provincial problems or indiscretions or mistakes. Therefore, it is quite in order for us, or for a committee of the Legislature, the Ombudsman committee, to call before us a body such as the Ministry of Housing or any other ministry with which some fault has been found by the Ombudsman, for example, the Ministry of Labour.

In this case, though, what you are asking is for a provincial committee to call before it in some instances a municipal body, and I am wondering how that works out in your opinion. I know that in some jurisdictions the Ombudsman does have control over the municipal areas, but it has not been the case in this province up until now. Do you see making the exception in this case?

Mr. Libman: Yes. Again, I think the reason for it is the satisfaction of the people in my community with the fairness and the effectiveness of the Ombudsman's office. At present there is no alternative to it. The only alternative would have been given with this proposed bill, and the people in my community see that as being a continuation of the present process, the police investigating themselves.

Mr. Philip: So what you are calling for then is a change in the Ombudsman Act that would give him authority to investigate and, indeed, even to the select committee on the Ombudsman to bring before it one municipal body, namely, the Metropolitan Toronto police commission, I assume, in cases where the Ombudsman's suggestions or conclusions have not been acted on.

Mr. Libman: That is correct.

Mr. Philip: Have you talked to any municipal politicians or people on a municipal level to find out whether or not that would be acceptable to them or if they have any opinions on that procedure?

Mr. Libman: I think that the approach we took was to canvass the people in our community to see what they felt would be a fair complaints procedure. It was their feeling that the Ombudsman's office would be fair and would have the appearance of fairness. I understand from the presentation that was made this morning that the municipal authorities here are content with the bill.

Mr. Philip: Certain people in Metropolitan Toronto may be content with the bill. Certainly the city of Toronto was not content with the bill and a number of aldermen certainly expressed grave misgivings about the bill.

Mr. Libman: We have not canvassed the municipal authorities. We felt we would deal with the bill itself and make a presentation with regard to an alternative to it. I guess it would depend on what happens to the bill and whether or not this idea then becomes feasible. If it does, then there would have to be further work on it, and it would then have to be put into draft legislative form.

Mr. Philip: I find interesting your claim on page two because my experience with your organization, and in talking with people in your organization, is that you do have a grasp of the grassroots and you are out there in the community, working on a day-to-day basis, and I might say doing a good job. But you say, "Most clients won't allow us to make a formal complaint and, in fact, often indicate that they have been warned not to cause trouble." Do you feel that if the bill goes through in its present form, where the police are investigating themselves, your clients will feel the same way?

2:40 p.m.

Mr. Libman: Yes, because what happens--and I can tell you from my own experience relating to criminal law--is that people are warned that if they make a complaint and the complaint is unfounded, they would then be charged with mischief. That is a legitimate warning to be given. But I find the way it is given is almost to discourage one from making a complaint. The experience I have had before the royal commission shows that there are cases where there is police brutality and the commission has so found in a number of cases.

I feel that people are discouraged from making complaints, and when they do want to make a complaint they are very reluctant to go back to the same body which inflicted the problem on to them. They are afraid to go to them. Numerous clients have told me, "The reason I made that statement was they said they would beat me up or they would bang my head against the wall," and things like that. If I ask, "Do you want me to put that forth in court?" they say, "No, I am afraid of what they will do to me." That happens all the time.

Mr. Philip: You have a fairly good relationship with the officers at 55 Division.

Mr. Lipman: Yes. As a matter of fact, we had a member of 55 Division, P. C. Fernandez, on the board for two years in order to foster that relationship.

Mr. Philip: Have you run into any of these police officers on the beat, as I have, who say they would prefer an independent investigation? Have they told you that at least if they are accused of something, once that investigation has been done and they are shown to be innocent, the community out there they are dealing with will have more faith in that decision?

Mr. Libman: They have said things like that to me off the record. We would be talking in the court corridors waiting for a case to be called and they would talk about that. They have their problems with the police investigating them because I guess within any structure there are officers who are not liked by other officers. I think there was a case in the paper on the weekend where an officer was acquitted on a charge of bribery, ticket fixing. He indicated he felt they were all out to get him and they were throwing him to the wolves. Certainly, in that case, he would have been happy with an independent inquiry rather than the police themselves doing it.

Mr. Philip: However, I think the kind of police officer I am talking about is not that one exception who gets into trouble, but rather the average one who, I am sure, drops into your committee office and drinks a cup of coffee and discusses what is going on in the community. Those are the people--the ones out there in the grassroots--who even though they cannot come forward officially will tell me privately they feel an independent investigation would do more justice to them and make them feel more comfortable. They are convinced they are not going to find that anything they do is improper anyway but occasionally somebody can make charges that are not well-founded. They would rather be exonerated by an independent investigation than by an in-house investigation that the community they are dealing with on a day-to-day basis might have suspicions about.

Mr. Libman: You are right there. One of the three officers who were involved in my case before the Morand commission came up to me afterwards. We were talking about the case, and I told him I was sorry it had been such a public forum. He said to me much the same thing, that he was glad he was exonerated by the commission because he felt that members of the public accepted that much more than exoneration by the police complaints bureau. I think you are right on that point.

Mr. Philip: Do you know of any community group that has been consulted by the Solicitor General or by his staff concerning Bill 68?

Mr. Libman: I know certainly that our clinic, which is the only legal aid clinic in the area, was not consulted. I do not know of anyone in the community who was consulted.

Mr. Philip: Thank you.

Mr. Breithaupt: Are there any other legal-aid (inaudible)?

Mr. Libman: Jim Renwick, who is also a member of the Legislature, started the clinic some 20 years ago in the WoodGreen Community Centre. I became involved with it seven years ago. We have been incorporated for the last four years.



Mr. Breithaupt: Are there any other clinics that have been in service as long as that within Metropolitan Toronto to your knowledge?

Mr. Libman: I think the one that would be the longest would be Parkdale. Of course they are sponsored by Osgoode Hall law school. We were the only clinic in the area. I have just read a press release from the legal aid committee saying they are about to start a new clinic in Scarborough. We are virtually the only clinic in the Scarborough area and also the Riverdale area.

Mr. Breithaupt: Do you know from your own knowledge whether the Parkdale legal clinic was involved in any way in the creation of the present Bill 68 that is before us?

Mr. Libman: I would be snocked if they were. I was discussing that with Mary Hogan, who is the director of the clinic and who will be a guest on my next TV show, and she did not mention anything to me. I am also involved with another legal aid clinic in the west end across the road from Parkdale called Landlord Self-Help Centre. We deal with small landlords and their problems in the west end of the city. I am the president of their board. I know that clinic was certainly not consulted. They have been in operation as long as Riverdale has been.

Mr. Breithaupt: And yet a group like yours and the other ones are--

Mr. Philip: I don't mind one supplementary, but 15-- if you want to ask one more--

Mr. Breithaupt: The only other thing I was going to say was that neither a group like yours, which has been involved for some 20 years, nor from your own knowledge the Parkdale one, dealing more often with the kinds of individuals who might be involved in this circumstance, were involved in this bill.

Mr. Libman: The third clinic on whose board I am involved with certainly was not consulted and they have been in operation for at least the four or five years they have been incorporated. They are funded by the legal aid plan in the west end of the city.

Mr. Breithaupt: Is it your opinion that a majority of community groups that are servicing people, particularly in the new Canadian communities, are aware of what is in the bill?

Mr. Libman: I think they are aware of what is in it now. I would have been happier if they would have been aware before it was brought before the Legislature and consulted on it. Our clinic, because of the area we are in, tries to hire people on the staff who have fluency in other languages. We have a large Chinese community in our area and Portuguese and Italian in other areas and we are able to communicate with people in the area in their own language. I would have been a lot happier with the bill had there been some prior consultation.

Mr. Philip: The impression I get is that groups such as yours that have legal and paralegal people on staff have done quite a bit in terms of helping community groups to become aware of exactly what is in the bill. Would you agree with that?

Mr. Libman: That is right. We have a number of seminars and other talks that are given in high schools and community halls in the area. Also we talk to people who just come in the door about the bill. Now that it has been brought before the Legislature, we are discussing it with them. It was a subject at our last board meeting. We do a lot of publicity in the area. We put little writeups in the Ward 8 News both to help subsidize them, because they have financial problems, and also to inform the community. We do everything we can in the Riverdale area to have that kind of dialogue with the people in the area.

Mr. Philip: What you are saying is that the groups that are coming before us are well-informed; they know what is in the bill. With the help of legal people like yourself and paralegal people, they have made the rational decision that they do not support the bill based on knowledge and not on any kind of emotional overreaction or anything like that.

Mr. Libman: That is correct.

Mr. Philip: Do you know of any group in the community that has been consulted by the minister or by his staff?

Mr. Libman: No, no group.

Mr. Philip: Thank you for an interesting brief. I can only say that I and my party agree with many of your recommendations. Mr. Chairman, I am finished my questioning.

Mr. Chairman: Thank you, Mr. Philip.

Mr. Williams: Mr. Libman, you indicate that your organization is employed by a community management elected annually as a board of directors amongst the area residents. How many members are on your board of directors?

Mr. Libman: We have 13 at present and there are two vacancies. Our last annual meeting was in June of this year.

Mr. Williams: Who are the people who comprise the board of directors?

Mr. Libman: That is a difficult question. I will see if I can remember all of them. Jim Renwick I have already mentioned. Charlotte Stuart, who is a deaconess, is the president of the board. Terry Hawtin is the vice-president and the treasurer. Barbara Abercrombie is the secretary.

I will try to think of the other names. Sarah Hall-Jacobs, who is a student, is another member. Roy Holton, a United Church minister, is another member. are not supposed to ask me difficult questions like that. Give me a minute and I will think of the other ones. I am just thinking of the ones who were at the last board meeting which was two weeks ago.

Mr. Williams: Is it the board of directors that gave the direction for the brief to be prepared?

Mr. Libman: That is correct. We had a meeting two weeks ago and, for whatever reason, I volunteered to make the presentation with John Argue who could not be here today. We discussed what was to go in the brief and then it was circulated among members of the board this week and was printed today.

2:50 p.m.

Mr. Williams: So you would have had a fair amount of information on what the bill was about through the assistance of Mr. Renwick on the board. He was of great assistance, I presume.

Mr. Libman: We certainly had his input. We tried not to take any party's position on it because our clinic is apolitical. We are not representing any party. Mr. Renwick and myself are in different parties, but certainly we had his input and his opinions about the bill.

Mr. Williams: So you feel there are no partisan politics involved in the activities of your organization as such.

Mr. Libman: That's correct. As I say, I am in a completely different party from Mr. Renwick. Politics do not enter into our discussions at all.

Mr. Chairman: Thank you very much. No one else has indicated they wish to ask questions, so I thank you very much for your brief.

Mr. Philip: Say hello to John Argue. He has been of help to a number of constituents of mine and has given a lot of free-time volunteer work in the community. I am sure the people appreciate the work that you and he many others are doing.

Mr. Piché: That looks like a political statement to me.

Mr. Chairman: Well, it is shaded.

Interjections.

Mr. Chairman: Thank you very much.

Mr. Philip: I share with Mr. Piché one thing. We are excellent at selling \$7.5 million worth of airplane.

Mr. Picné: Thank you. I agree with that.

Mr. Chairman: Mr. Kalevar, do you want to come right up? I believe everybody has copies of the brief.

Mr. Kalevar is a member of the Continuing Committee on Race Relations. You have exhibit 24 in front of you which is his brief. Would you carry on with the brief, Mr. Kalevar.



Mr. Kalevar: I would just like to tell a little bit about my background and my involvement in this thing before I start. I am the ex-chairman of this committee and I am also the ex-chairman of Pilot 14. That is the committee on race relations and policing, a project which is funded by the Attorney General himself. We were the first group to be formed in Metro dealing with race relations, that is, before the Urban Alliance on Race Relations. We have been here for a long time. We have not had the Metro or provincial funding to make as big a show as Urban Alliance has done, but we have been around.

To start out, I would like to point out that towards the back there are two appendices. They are two briefs we presented before to two government bodies. Appendix one is to the Metropolitan Toronto Board of Commissioners of Police and appendix two is to the Metro Council's Implementation Committee on the Pitman Report. You can see we do have some track record already in this area. This is not our first brief in the area of policing and race relations. Later on, I will be referring to these briefs and to some of the incidents we have outlined before. We will come to it as we go along, so let me start out with my brief now.

First, we believe that Bill 68 needs fundamental revision. Why is that? Very clearly, to us anyway, Bill 68 violates three principles of practical justice and policing. I don't think legislation should be coming out contravening principles of justice and policing. The three principles are, one, justice delayed is justice denied; two, justice must not only be done, but it must be forthrightly seen to be done; and, three, in police departments police officers must never testify against their brother officers.

The third principle is really a norm in the police department that is respected by most police officers, and it is a norm that has been substantiated by Justice Morand in his report on page 137 where he says: "In so far as the problem relates to the colouring of evidence to assist a fellow officer the problem runs very deep indeed. There is without question a feeling among many officers, particularly but not confined to the lower ranks, that it is wrong to give evidence that will reflect poorly on a fellow officer." With violations of these fundamental principles, again we must repeat that we think the whole approach must change. The whole approach to this area has to be altered. We will try to articulate why and how.

Since the bill is about complaints, I think it is proper to look at the complaints statistics available. The complaints statistics are borrowed from the brief presented by the Metropolitan Toronto police force, so I trust they know what they are doing--sometimes I wonder--but I guess since they presented a brief to you they should know.

Let us compare these statistics with the complaints statistics in Chicago, which has a civilian review board called the Office of Professional Standards. It fields complaints 24 hours a day, by phone, mail and walk-ins, at the staggering rate of one million a year. We have 800 to 900 complaints a year and

Chicago has one million. So the question that comes to our mind is is our "cops are tops" police force serving the community a thousand times better? The disparity between statistics is one thousand times.

3 p.m.

Mr. Philip: But is is a city three times the size with a higher crime rate also.

Mr. Kalevar: Yes, we say that. Allowing for the larger size and higher crime rate of Chicago, we are still left with the significant disparity to be explained. Even if you allow for the three times larger size, let us say even 50 times or 100 times, we are left with a disparity to be explained. So, obviously, there is something missing. One may say we can explain the difference by either adopting a holier-than-thou attitude, that Toronto the good is better than Chicago the bad--let us leave it at that. That is one way of handling that. The second way would be to accept that the credibility of Toronto's complaints bureau is very low, that the police complaints bureau in Toronto has a very low credibility. You do not have to accept my word. Bill Allen, a special assistant to the Attorney General, has said--

Mr. Hilton: Sir, I would like to know who Bill Allen is. I have been with that ministry--I am not with it now--but I have never heard of a Bill Allen.

Mr. Kalevar: He was special assistant to the Attorney General, Mr. McMurtry, and he used to deal with minority groups.

Mr. Hilton: When?

Mr. Kalevar: I met him a couple of years ago. This is his quote.

Mr. Hilton: I know of no such person, sir.

Mr. Kalevar: Maybe that needs some verification but, as far as I am concerned, this is his quote, which has already been used in another submission. I think it has been used by Mr. Dahn Batchelor.

Mr. Hilton: I noticed that. Mr. Batchelor used it too. I did not challenge him, sir. I am sorry, I should have.

Mr. Kalevar: Okay, sir. I think that is something we could confirm with the minister himself.

Mr. Philip: I will ask Mr. Batchelor. That will be the easiest and quickest way.

Mr. Hilton: Just lean over the fence.

Mr. Philip: I will lean across the street.

Mr. Kalevar: Anyway, even if he has not said it, I think many people have. I thought he was the best person at the court because he was close to the ministry. I have met him and talked to him, although I did not hear these words from his mouth: "The existing police complaints bureau, staffed entirely by Metro police officers, has failed to win the confidence of minority groups. It's been totally discredited." We will leave it at that. Maybe there are questions to be asked on this. Whether Bill Allen said it or not, we do face a contradiction as minorities in this Metro city.

The fact that we are discussing today supports our contention that Mr. McMurtry has accepted, at least partly, the second explanation, that the credibility of the Metropolitan Toronto police complaints bureau is very low and people just do not go there. Another contributing factor towards this reform is, we believe, the perception of bias. We will have more to say about that later on. None other than the Metropolitan Toronto police force, in their brief, has placed the following interpretation on Metro's complaints statistics.

Mr. Hilton: There is no brief from the Metropolitan police.

Mr. Kalevar: You deny it, but I have it in black and white. This time I am going to look it up.

Mr. Chairman: Is it not perhaps the Metropolitan Toronto police association?

Mr. Kalevar: It says it is the Metropolitan Toronto police force. Here it is; it is the blue covered one. I got it from your clerk. Maybe you were not here when they presented the brief.

Mr. Philip: No, he has been here all the time. It is the minister who sometimes is not here.

Mr. Kalevar: I don't know, but anyway the brief is here, sir.

Mr. Hilton: I have never seen it.

Mr. Kalevar: I am sorry. You must have heard it anyway.

Mr. Hilton: No.

Mr. Kalevar: It is exhibit No. 4.

Mr. Hilton: May I see it?

Mr. Chairman: Yes, it is. It says police force.

Mr. Kalevar: That is what it says.

Mr. Piché: Mr. Hilton, do you stand to be corrected now?

Mr. Hilton: I stand to be corrected, but it was done through the police association.



Mr. Kalevar: No. There is a police association brief that is different from this one. The police force brief is from the commissioners of police. The police association is the Ed Philip side of the story, the union.

Mr. Philip: I beg your pardon?

Mr. Kalevar: The police association is under the police union.

Mr. Philip: That's right.

Mr. Kalevar: That is different from the Metropolitan Toronto police force. It is the management brief I'm dealing with.

Mr. Philip: Both Mr. Hilton and I stand to be corrected on that.

Mr. Hilton: This must be the brief Chief Ackroyd will be presenting when he comes.

Mr. Philip: I suspect that is what it is.

Mr. Chairman: Then, sir, you are quite correct. It is one we have not yet heard orally in front of us apparently.

Mr. Kalevar: I considered at one time in my presentation dealing with the Metropolitan Toronto police association brief also, but then I thought I would be taking too much on. I restricted myself to the statements by the minister and the Metropolitan Toronto police force because they are actually mentioned in the bill right on the front page. That is how I ended up choosing only those two briefs to speak to.

Mr. Hilton: Undoubtedly, we will be hearing about it tomorrow from the chief.

Mr. Kalevar: I will be delighted, sir, if you hear from him again so that your memories are refreshed.

Mr. Chairman: That is fine. Would you like to carry on then?

Mr. Kalevar: In their brief they place two interpretations on these complaints statistics. They suggest the statistics demonstrate a calming or easing of police-citizen tensions, while they recognize that their critics use the same statistics to illustrate an increasing lack of confidence in the ability and integrity of the present complaints bureau. So the same statistics tell two completely different stories.

As it happens, if we believe the police force side of the story, then Bill 68 is not required at all because things are getting on well. That is the interpretation given by police management. If things are going well, why are we dealing with Bill 68? Obviously, the minister does not quite buy that interpretation

by police management. Again, if you look at what the critics of Bill 68 say, they believe Bill 68 is a very inappropriate response. Why is it inappropriate? Very simply, because it expects people who do not have confidence in the police today to trust the police with their complaints for one long month tomorrow. Being minorities, we not trust the police today, by and large. We are asked to trust them tomorrow with our complaints for one long month. This contradiction is very real to us in human terms.

I think what is being asked for, a change of heart, is not something that is going to come about by passing the bill here in the Legislature. According to my contacts, the minister did not consult any of the minority groups before the bill was formed, but suddenly he expects that the passage of the bill would lead to a change of heart in the minds of the minorities. Well, under the circumstances, justice is just not seen to be done for at least a month. This delay in this computer age, if you like, is a very long time.

3:10 p.m.

We would just like to project a future scenario here, the state of affairs after Bill 68, how a future scenario would look once Bill 68 is passed. Let us say an underemployed or unemployed minority woman, frequently looking for rental accommodation, has a complaint, for some reason, against someone who has been a policeman for 15 years. She launches a complaint in her poor English. Another police officer, who graduated with this police veteran, finds it unsubstantiated, and the public complaints commissioner is so busy with a major incident in the city that this woman's complaint is way down on his long list of cases to be investigated.

True to his word, Judge Philip Givens, the chairman of the Metropolitan Toronto Board of Commissioners of Police, prosecutes her under the Criminal Code for public mischief or some such equivalent criminal offence. The innocent complainant is unable to defend herself and is branded by society as a criminal.

This scenario is quite real and possible in the near future, as we see it, after Bill 68 is passed in the present form.

After a couple of publicized incidents like these, the complaints statistics begin to drop drastically and the chairman of the police commissioners announces to the press how police-community relations are improving in Metro. If that happens, that will be a sorry day.

On the other hand, the well-entrenched officer, who is well paid and powerful, risks his employment status for gross misconduct not proven beyond a reasonable doubt. And there is not even an entry in his personnel record, because he did not accept the allegation; that is, if I read Bill 68 right, there will not be any entry in his personnel record if he does not accept it. But the innocent complainant suffers a criminal record.

It is clear to us that what the bill is supposed to deal with is a conflict of gross unequals and that it is setting up is double standards in favour of the powerful, elitist police. Double

standards are bad enough but, when double standards are set up in favour of the powerful, I think that is really making things worse.

Police employment, like the professions of accountancy, engineering, law and medicine, is a position of public trust and should enjoy no more protection than other professions. This profession, as far as I know, is the only profession empowered to use force and violence. It cannot, must not and should not receive the same protection for losing public trust as the individual who is put behind bars.

The loss of public trust is hardly a punishment, after all. If anything, it is somewhat similar to suspension of a driver's licence; a privilege, not a right. It is not my right to become a policeman. It is not anybody's right to become a policeman. It is a privilege that society gives to certain individuals for the task of policing which society has to perform.

Mr. Philip: Who are of a certain height.

Mr. Kalevar: At one time I wanted to be a policeman, but I was not the right height. Now I am not that age.

Mr. Hennessy: You should have become a jockey.

Mr. Kalevar: I couldn't find a horse to ride.

Mr. Philip: If you were a politician, you would be riding hobbyhorses.

Mr. Kalevar: A demerit system might be appropriate, in our view. We really think some sort of demerit system for police officers, just like the system we have for drivers' licences, would be an appropriate way of dealing with complaints on a regular basis against police officers. If they have so many demerit points, then they are suspended for so many weeks, or whatever. And, just as you might say you will never drive again, you could say, "You will never become a policeman again," if the situation is that bad. Certainly we should not treat a person as being a policeman by right. It is very clearly a privilege position, we would like to suggest very strongly.

A citizen's right to be innocent until proven guilty is the fundamental basis of the criminal justice system in Ontario, Canada and most of the British Commonwealth. That becomes meaningless if one is subjected to force and violence before the trial. Gentlemen, that is the nature of the police excesses. With Bill 68, one may say that the RCMP always get their man except when he happens to be a Metro police officer. That is meant as a side remark, because even the RCMP will have a tough time getting a Metro police officer if he has to cool off for one month.

Mr. Philip: I don't quite understand that. Surely if a police officer commits a crime, a crime as distinct from an indiscretion, or something that can be complained against, he would be charged immediately. There is no 30-day lapse pending an investigation. He would be charged right at the moment.



Mr. Kalevar: It is a side remark. I hope you don't take it very seriously.

Mr. Philip: But if there were a criminal act by a police officer, he would be charged immediately in the same way as any other citizen. Would you agree?

Mr. Kalevar: Again, it should be done, but we have not seen it done immediately. We had to actually fight for criminal charges to be laid against police officers when Albert Johnson was killed in his home.

Mr. Philip: I am just pointing out to you that there is nothing under this act that would change the fact that, if a police officer commits a crime, he will be charged in the same way as any other citizen.

Mr. Kalevar: Maybe you are right. But it is not only that; it is the practice that has created the perception, at least in our mind, that we had to fight to lay criminal charges on a police officer when Albert Johnson was killed. We had to have demonstrations about it and so on.

I now want to deal with building a relationship of trust. Trust is a two-way street. In the past, we have made at least two written briefs regarding police behaviour and practices in the city. I will just refer to appendix one, page one, where we have made some recommendations to the Metropolitan Toronto Board of Commissioners of Police, as follows:

3:20 p.m.

1. Police-community relations will be enhanced by nameplate identification. Right now, all we have is numerical identification. That poses a problem for citizens to relate to officers as persons. You can't just say, "Hello, 61042," or something. It is much easier if you could see the name and say, "Hello, Mr. Smith" or whatever the name might be.

2. Display of multilingual ability of an officer is something to take pride in, we believe. In Toronto, where 50 per cent have knowledge of another language besides English, it is an asset to be cherished, preserved and promoted. So we think that, in addition to the name being identified on the uniformed policeman's breast, he should also identify that he can speak Italian, Portuguese, Ukrainian, Hindi, Chinese, Japanese or whatever he happens to know. That is not asking for too much. It is not a very big demand.

As I recall, when we presented these particular recommendations to the police commission, they discussed them and they gave us a cost. They said it would cost about \$30,000. That was their estimate to prepare all that. This is a one-time cost, mind you. This is not something you have to do every year. Once the name is on, it is on; you have transferred it on. However, we must say that they have not yet acted on the matter. They tabled the resolution.

Mr. Philip: With the greatest respect, these are interesting points you are making, and I can appreciate your concern, but this committee is dealing with a specific bill. I am trying to be sympathetic to some of the things you are saying, but I am having trouble relating it to the bill.

I can understand how the main part of your brief relates to the bill, but the appendices are interesting information and background for us to read in our own leisure time. I am not sure going through that is helping us to understand your views on this bill so that we can ask you questions and get on with the business of this committee.

Mr. Kalevar: Fine. If you would like me to skip over that part, that's fine; I can skip it. The point is really that it comes back to building a relationship of trust. I think that is what it will all come back to.

3. There are similar problems with police powers of plainclothesmen. They have used police powers without adequate identification. How does one discriminate as a citizen between a plainclothesman and a hoodlum if there is no identification established right at the beginning before the plainclothesman assumes police power? What is to stop a hoodlum from saying, "I am a plainclothes officer," and asking you to do something? There is no clearly established guideline, at least in the minds of citizens, as to how to react to such situations.

It comes back to the show of trust. Maybe the trust of the police has been abused by some hoodlums, but then the police have not established well-defined guidelines as to how plainclothesmen will behave while assuming police powers. That is enough for that one.

Let us go now to the second appendix, which is also very interesting in terms of the relationship of trust that we are talking about. On page two of appendix two, you will see that there is a title, "A Police Incident." This actually did happen. On November 6, 1977, there was a demonstration at Queen's Park. Two members of our committee witnessed a white, unmarked van, registration plate number A21-903/77, parked at Queen's Park. This van was using audiovisual equipment to record the progress of the demonstration. We made inquiries and found the owner to be the municipality of Metropolitan Toronto, 590 Jarvis Street.

The two members also saw Mr. Phil Givens leave the unmarked car. We do not believe that in a democratic society the chairman of the Metropolitan Toronto police commission should be snooping on us at a peaceful, democratic demonstration. That means, in addition to the problems of illegal police, as a community we feel there are others keeping an eye on our demonstration. There it is and the police are videotaping us. On the other hand, the plainclothesmen manning the van were masquerading as a remote videotaping unit from cable television. These are the details.

We raised these questions with the metropolitan committee. The questions were, can we see the audiovisual products prepared on November 6, 1977? We have not received an answer to that yet.

Can we see it? Wouldn't you gentlemen like to see what is on that videotape? At least I would like to see it. Why were we videotaped? That is the other question. Why were we videotaped by the police? By the media we understand, but why by the police? Then why should not these videotapes be destroyed? Could this not be interpreted as police intimidation of the immigrants?

Mr. Chairman: Mr. Kalevar, as Mr. Philip pointed out before, these points you are making are noteworthy and we should read them, and I am sure all members of the committee will read them after, but they aren't really right on point with Bill 68.

Mr. Kalevar: Sir, from the responses I have had from Mr. Philip and the gentleman next to him, I am not sure you have read all the other briefs that have gone before, and I am not sure you will read my appendices after I am gone. So, to be very frank, I would like to read them, yes, because it seems that people have not read them. You have missed the brief by the Metropolitan Toronto Police Force and the Metropolitan Toronto Police Association. You did not have their briefs?

Mr. Philip: With the greatest respect, sir, if you had followed the committee, as you probably should have before making silly statements, you would realize that I have been in this chair as Mr. Hilton has been in this chair. We have read every brief that has come before us so far, and your insulting remarks to the members of this committee or the deputy minister are not working to your advantage at the present time.

Mr. Kalevar: I am not trying to be insulting. I am trying to be very factual, sir.

Mr. Piché: There is a certain amount of truth that some members, without naming any, sometimes do not do their homework and read material in front of us, not only here at these committee meetings, Mr. Philip, but also in other places. I would say the comments made should be accepted in a certain light.

Mr. Philip: The point I think Mr. Hilton made before was that the brief that has been mentioned has not been presented yet, and members of the committee have the habit of reading briefs before the person comes to present it. It is not fair to suggest that members of the committee have not read a brief that has not been formally presented at the moment.

Mr. Chairman: All of which is interesting. However--

Mr. Kalevar: Okay. I will get away from the appendices and I will get back to the brief.

Mr. Chairman: Yes. And to do with Bill 68, to assist us with the consideration of Bill 68.

Mr. Kalevar: Yes. I am trying to be helpful. Thank you, Mr. Gordon, for your very helpful remarks and your time.

Mr. Philip: Mr. Gordon is not present.



Mr. Mitchell: That is Mr. Piché.

Mr. Kalevar: Oh, I'm sorry.

Mr. Philip: Just as you have talked about a brief that has not yet been presented, you are talking about a member who is not here.

Mr. Kalevar: Sir, there are two name plates very close to each other.

Mr. Philip: Mr. Piché is the man who used to be a jockey.

Mr. Kalevar: Thank you very much.

We do agree with the Metropolitan Toronto Police Force on page 29 of their brief when they say, "It is important to remember, and it must be reiterated, that justice must not only be seen to be done by citizens but it must also be seen to be done by police officers."

We are equally concerned about police officers seeing the complaint procedure as a just procedure, and we would like to affirm that. However, we question their motives and practice of videotaping lawful minority demonstrations, especially when they like to be viewed as defenders of civil rights and liberties. That is what they claim at one stage in their brief.

3:30 p.m.

On top of that, they have the gall to submit before you, on page 30, "Thus we feel the concerns of some critics of the system in so far as minority group representation is concerned are both premature and without substance." What hypocrisy! That is really something. One third of the members are there from the police association and they do not want anybody from the minorities on the board. That is the way it appears if I read the thing right. We violently disagree. We think there should be minority group representation.

In short, the commissioners' indifference to our brief and the continuing surveillance of minority activities have not allowed us to build up any confidence in the commission and its chairman. How can we? When we make simple suggestions they do not accept and act on them. On top of that, they keep up surveillance of us as if our practice of our democratic rights is a criminal activity. That is just intolerable.

On the other hand, we would like to suggest that an independent civilian investigation by itself does not suggest lack of trust in the police as the office of the Ombudsman does not suggest lack of trust in the Ontario government, even if it enacts Bill 68 in its present form.

Looking at Metropolitan Toronto itself, we think it is a bilingual city with a unilingual police force. That is one sort of simplistic version of the whole thing. We are a bilingual,

multicultural city in a bilingual country that has a largely unilingual police force. A bilingual person can translate and so has attributes to communicate across cultural boundaries. One cannot say the same for unilingual persons. This inability of our police to communicate across cultural boundaries is a great handicap in day-to-day encounters with bilingual, minority citizens of different cultural backgrounds.

At the risk of repeating ourselves, may we point out that the police-citizen gap between our largely homogeneous police force and our heterogeneous citizenry--heterogeneous by language, religion, race and culture--is now much wider than before, to the detriment of minorities.

We would like to comment on the Solicitor General's statement on September 22. We agree with him when he says Bill 68 represents a drastic improvement over the existing state of affairs. But the existing state of affairs is dismal. We disagree with him when he says complete openness of the civilian complaint system to public review. We think it is too little, too late. To be exact, only a few cases will be reviewed and those after one long month. It is just not satisfactory.

We have great difficulty in understanding him when he says, "I have great difficulty in understanding those who are so unwilling to give this initiative an opportunity to prove itself." If he thinks we can trust tomorrow those who have been videotaping us until yesterday, then he is mistaken. Our human contradiction is something he must get to know about.

We agree with him that the complaints that can be settled informally should be settled informally. But that should not keep the civilian investigators out. If it is a legitimate settlement we, as members of the public, will be pleased to see it happen. There is no need to keep us out. We, as taxpayers, do not wish to create a bureaucracy larger than is necessary.

Mr. McMurtry is really hoping when he states: "My own belief is that the bill will work. These resolutions will be perceived impartial." Our only hope is that this legislation is not chiselled in stone but that it is a pilot project for as short a time as possible.

In 1977 Mr. Pitman said, "Now is not too late." After Albert Johnson, it is getting late by at least one life and the anger and anguish shared by thousands in Metro. By 1984, the scars left by Bill 68 on the metro community may be permanent and beyond repair.

My recent visit to riot-torn Toxteth in Liverpool, England--I was there last summer--revealed that the legal processes there have come to a standstill. Witnesses to police brutality do not come forward as they are afraid of police reprisals, while the demands for amnesty to witnesses by community leaders are not heeded for fear of pardoning other lawbreakers.

I hope this scene never comes to pass in Toronto. The three years of Bill 68 have the potential of casting long shadows on the

future of race relations in Metro. It is our sincere hope that these three years of toying with the future of police-minority relations in Metro do not come to haunt us here in 1984 and beyond. In 1984 it will be late for sure.

Mr. Chairman: Thank you, Mr. Kalevar. Are there any questions that the committee wishes to ask of Mr. Kalevar?

Mr. Williams: Mr. Chairman, I am sorry I missed the first part of the presentation. Is this committee associated with the First Unitarian Congregation?

Mr. Kalevar: Yes. It operates out of there.

Mr. Williams: So this is really a committee of the church or the congregation, is it?

Mr. Kalevar: The congregation works in co-operation with us, but it is a Metro-wide committee. They give us space and an address to use, but it is a Metro-wide committee. People who do not belong to the church belong to the committee.

Mr. Williams: How many people are there involved in this committee?

Mr. Kalevar: We have a membership list of about 100 plus.

Mr. Williams: I am sorry; you might have answered some of these questions earlier--as I say, I missed the first part of your presentation--but when was this committee first set up? You say it is the Continuing Committee on Race Relations. When was it first established and for what purpose?

Mr. Kalevar: It was established for the purpose of race relations in Metro. At that time there was no committee. This was the first committee that was established, even before the Urban Alliance was formed. It was established way back in 1976 if I remember rightly; I do not have the exact date in my mind here. I was not a founding member.

Mr. Williams: I understand from the title of your committee what its purpose is, but I am just wondering whether it had been set up to deal specifically with this issue or whether it had been set up to deal with other issues involving race relations that had nothing to do necessarily with the law enforcement agencies.

Mr. Kalevar: It has dealt with all other issues of race relations. Policing, of course, is an important and significant part of it, because that is where it seems a lot of complaints are noted.

Mr. Kennedy: Is this your full-time occupation with this committee?

Mr. Kalevar: Not at all, sir. I am a professional engineer.



Mr. Philip: One of the comments that struck me as interesting is that you talked about your recent travels to England and the fact that the complaints procedure over there is just not working. There is certainly evidence that is the case at the present time.

Notwithstanding the fact that Ontario, or more particularly Metro, is nowhere at the stage that Britain is at the moment, I gather that what you are saying is that, in your experience, the lack of an independent inquiry system is contributing to some of the tensions in that country. Is that the purpose of your statement?

3:40 p.m.

Mr. Kalevar: I am glad you refer to that. I spent some time in Toxteth; before I went there I thought the issues that would be raised most often would be unemployment, education and housing--and, of course, those issues are raised--but, surprisingly, policing came out as the topmost issue in that area. Police relations with the minorities in Toxteth was the topmost issue in that area.

Mind you, to give you some background, Liverpool is a city built originally by slaves. The blacks in Liverpool or Toxteth are the progeny of the freed slaves. Perhaps the policemen today are the progeny of the former panhandlers or something. The relationship there with respect to police is really atrocious. The credit the community is willing to give to the police is so lax that it is not even funny; you saw what happened over there.

Mr. Philip: When you say the community, you are talking not just about blacks in the community but also about white people, are you? You had an opportunity to speak to more than just the "visible minority" groups?

Mr. Kalevar: Yes, I did speak to the whites. The whites shared the same problems. Actually, it is interesting that in Liverpool the blacks so far have had a tradition of marrying whites; there are a lot of mixed generations there. In that sense the community is quite united; black or white, they actually work together. But I guess the people who do the policing do not see that very readily. They always see it as black. Along with them, of course, there are people who are white who also share the same plight by and large--the same economic plight, anyway. Yes, I did talk to other whites, and they have similar problems.

As a matter of fact, during the time I was there two of the most advertised cases in the riots, and the most severe cases, were related to whites. One gentleman alleged that his penis was attacked by a policeman wielding a machete. What bizarre thing can you think of? But there it was, the story was right in the newspaper, and it is being investigated. One white gentleman was run over by a speeding police car during this demonstration thing. They were apparently using some of the Ireland tactics of driving speeding vehicles right at the mobs gathered around. The mobs were not prepared for such a thing. It is said that one disabled white was in the mob, and he was just run over.

Mr. Philip: Notwithstanding the two rather gory examples you just gave, I gather the whole point about it not working does not just relate to the one city you visited.

Mr. Kalevar: No. It also relates to other cities. This is of course the most severe case that I found. It was true in Brixton, and it was true in Manchester, where I went to Moss-side. The way I see it, Toronto is very far away from that stage yet, I would say. But at the same time it is going in the same direction if the police credibility in the minds of the minority is not established right from now. Once the police credibility is lost--and it is not there right now; the police have to really do something to establish that.

Mr. Philip: Is it your feeling that you can make substantial changes more easily in a city such as Metropolitan Toronto, where perhaps the police still have a considerable degree of credibility and are considerably more respected than in other cities, or in a city that is desperate, such as the one you visited in Britain?

Mr. Kalevar: Toronto definitely has a much better chance of succeeding now, because we are nowhere near as polarized as they are.

Mr. Philip: What you are saying is that a move in the direction in which the community groups are advocating will reduce the possibilities of polarization?

Mr. Kalevar: I definitely think so, yes.

Mr. Philip: Do you know of any community group that has been consulted by the ministry or the minister on this bill?

Mr. Kalevar: Most of the active community groups right now are part of the coalition against Bill 68, if you are aware of it.

Mr. Philip: They were not consulted prior to Bill 68 being--

Mr. Kalevar: I don't think any of those parties will say that they were consulted.

Mr. Philip: And you or your association were not consulted?

Mr. Kalevar: We were not consulted. We are part of that. Just the other day I picked up this from the library. Have you seen this?

Interjection.

Mr. Philip: Is it your opinion that this bill, if it goes through in its present form, is better than nothing, or that it gives the appearance that something is being done when really nothing of substance is being done?

Mr. Kalevar: I don't think nothing is a choice at this stage of the game. Something is better than nothing; I think that is a very minimal agenda. But I don't think that is what we should be aiming for, with all the time and effort of this esteemed audience here. I don't think it should be what is better than nothing. I am sure we can do much better than that, and that is what we are after.

We think a much brighter future for Toronto is possible with considerable amendments to or review of Bill 68, and I think this should be attempted. I think basically it is again just a question of fair justice that both sides should be heard. In this case, the way Bill 68 is worded, it seems like the ministry has considered only one side of the story, the police force and the police association. I don't see any evidence of the committee groups who have contacted the victims having being consulted significantly to the same level as the police force and police association seem to have been consulted.

Mr. Philip: The Continuing Committee on Race Relations, that would have a membership that would be not only the blacks and East Indians but also white people?

Mr. Kalevar: It is largely white. Unfortunately, the time of the day is not conducive for many people to come out; I think evenings are--

Mr. Philips: So it is has mixed races?

Mr. Kalevar: It is a majority white committee, I would like to point out; it is not a majority of visible minorities.

Mr. Philip: My experience, and that of the people I talked to, has been that it isn't just the "visible minorities" that are concerned about this bill, but that there are a number of white Anglo-Saxons who are concerned about the lack of credibility of this bill and of what it will do in terms of polarization unless the necessary changes are made, changes you are advocating. I just found it interesting that, in fact, the majority of your committee is white and shares that point of view.

Mr. Kalevar: I agree with that, yes.

Mr. Philip: Fine. Thank you for for an interesting brief. I am sorry that I cut in on you on some of the other matters that were interesting, but I really didn't think they related to the bill. We will be reading them, I can assure you.

Mr. Chairman: Fine. Thank you. I think that is the limit of the questioning. Thank you very much for coming before us and assisting us with this.

I believe that completes the day's session. We will adjourn until tomorrow morning at 10 o'clock. Dr. Berger is first tomorrow morning. There are two submissions tomorrow morning.

Mr. Kalevar: Thank you, Mr. Chairman.

The committee adjourned at 3:50 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
TUESDAY, OCTOBER 6, 1981  
Morning sitting



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Clerk: Forsyth, S.

From the Ministry of the Solicitor General:  
Hilton, J. D., Deputy Minister

Witness:

Berger, Dr. P. B., South Riverdale Community Health Centre

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 6, 1981

The committee met at 10:09 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

The Vice-Chairman: I see a quorum of members sitting around the room. If you would take your places at the committee table, we can proceed. The chairman is not available this morning, so I was asked to sit in his stead.

I am filing as exhibit 25 the presentation that is being made this morning by Philip Berger, MD. Dr. Berger, would you like to come forward and proceed at the table? Has every member got a copy of Dr. Berger's brief? It is number 25, submission to the standing committee on administration of justice, Legislature of Ontario, Metropolitan Police Force Complaints Project Act, to be presented by Philip B. Berger, MD.

Dr. Berger, welcome to our committee.

Dr. Berger: Thank you.

The Vice-Chairman: Members are interested in hearing your presentation this morning. You can make it as presented in your brief or elaborate thereon or synopsise as you wish, but we would be interested to have you proceed at this time.

Dr. Berger: I would like to read through my brief. I do not usually read through briefs because I tend to be boring, but I would like to do that today because it is quite brief.

My name is Philip Berger. I am employed as a staff medical doctor at the South Riverdale Community Health Centre in the east end of Toronto. My submission today is in my own capacity--not in that of my employment at the centre. I am grateful to the committee and to its chairman for permitting me to appear at such short notice. I only put forth the request to appear one week ago.

The reason I felt such personal urgency to appear before the committee was a continuing intention of the government of Ontario to exclude provisions in Bill 68 for independent civilian review of police complaints. The source of my anxiety is first-hand, current knowledge of allegations of police misconduct which have never proceeded to the existing police complaints bureau, the only reason being lack of independent civilian review.



Over the past 27 months, until as recently as two weeks ago, I have examined 13 patients who have claimed maltreatment by officers of the Metropolitan police force. Twelve of these requests were lawyer-initiated and one was patient-initiated. Three other physicians, who do not wish to be named, have examined eight additional patients and have submitted relevant details of their examinations to me. As well, these eight patients who were examined were lawyer-initiated requests.

I set forth a summary of these 21 cases in table form for your review. However, the table that precipitated my desire to appear before this committee is the very last table, number 13, which is on page 12 of the brief. Table 13 indicates that only one of the 21 patients lodged a complaint with the police bureau. This complaint was found to be "unsubstantiated." Medical findings with supporting photographs were strongly suggestive of the history as stated by the patient.

A report of the medical findings was never solicited by the police in their investigation of the case. Furthermore, I have been able to determine only two reasons for complaints not proceeding and not being registered in the remaining 20 cases: one, all lawyers discouraged their clients from complaining because of police-controlled investigation; and, two, some patients stated that a police-controlled investigation was a sham.

Before reviewing the tables, I would like to make two brief comments. Most of the examinations were conducted in the three provincial institutions located in Toronto--the Toronto East Detention Centre, the Toronto West Detention Centre and the Toronto Jail, more popularly known as the Don Jail. None of these examinations would have been performed had it not been for the co-operation of officials at the Ministry of Correctional Services and superintendents of the various institutions.

The role of a physician when called upon to document alleged maltreatment by police is to record the patient's history, examine the patient and come to a reasoned conclusion about the findings or lack thereof in relation to the history. The findings could be inconsistent with the history, consistent and compatible with the history, or strongly suggestive of the history. It is not the role of a physician to decide whether the patient is telling the truth, to determine who inflicted the injuries, nor to precisely define how and under what circumstances the injuries were inflicted.

Proving the history to be true, or proving who inflicted the injuries and proving how the injuries occurred are medically impossible and do not fall within the jurisdiction of medicine. The task of proving belongs to the jurisdiction of the judicial process with medical evidence being one of the number of considerations.

On that note, I would like to proceed to go through the tables. I would like to ask the indulgence of the chair to defer questions, unless they are questions of clarification rather than elaboration, until I complete the entire brief because my statements will answer some of the questions.

Table one simply indicates at what period of time the patients were examined. As you can see, 13 patients were examined in 1980 and five have been examined so far this year. The number in parentheses indicates the number of patients examined by the three other physicians who submitted cases with relevant details. This applies to all tables presented today. As you can see, two thirds of the patients examined were between the ages of 20 and 29. There was only female out of the 21 patients examined.

Table four is called Sector of Society. I have detailed from which sector the patients we examined came from. As you can see, more than two thirds were members of the so-called minority groups. Table five shows that there were nine different lawyers representing the 21 patients and they came from a total of six different law firms.

Table six is entitled Time Frame of Examination. It details the time between the alleged abuse and the examination. Nine patients were examined within 24 hours and five more within 48 hours. The one patient who was examined over 96 hours after the time of the alleged abuse was examined two to three weeks afterwards. In fact, he actually was not examined; he was only interviewed because there were no findings, according to him.

Table seven is Location of Examination; 17 of these examinations took place while the patient was in custody and four took place out of custody in the offices of the particular physicians. Table eight shows that in only 11 cases was information about which police divisions were involved recorded by the physicians. Among these 11 cases, seven different police divisions were involved in the number of cases indicated in the table. Three police divisions were involved in more than one different case of alleged abuse.

Table nine outlines where the alleged abuse took place. Ten incidents were alleged to have taken place in police stations, five in police cars, four in the streets and three in the particular patients' homes. I should note that this is only of 14 cases where the information was recorded at all.

Table 10 indicates the history as stated by the patient to the particular physician. Notable findings to me are that all patients claimed they had been beaten. Under methods, different objects were used. According to the patients, these included clubs and running shoes. As you can see, handcuffs were on during beatings in over half the cases, according to the patients. I would like to note that many of the patients claimed that the handcuffs were squeezed tightly or pulled in order to cause discomfort and pain.

Under the section entitled Location, under genitalia, examples of abuse to that area included, according to the patients, pulling the scrotum, placing a foot against the groin and kicking the patient in the groin. Four patients claimed they had been smothered. Two of them claimed independently that they had had a rag with the scent of a strong chemical or insecticide placed against their faces. It had a strong odour and made them dizzy, nauseated and light-headed.



The rest of the table is self-explanatory in terms of numbers. I have put three notes on page nine that follows table 11, explaining in further detail three different allegations of abuse. I would like to go through these briefly. Regarding cigarettes, in only two cases was a cigarette allegedly held against the skin. In the third case the patient claimed the cigarette was held underneath the nose so that the smoke would rise up into the nasal passage causing extreme discomfort but never burning him.

Under the section of verbal threat of death, one patient claimed he was aware of the term that is applied. He had been through a procedure that is known as sham execution. The patient is made to feel as if he or she is really going to be executed but, in fact, the whole thing is faked. The second case was not as severe as noted here. Point three just outlines in table 10, under the section entitled Other, the types of abuse according to the patients.

10:20 a.m.

I would also like to note at this time that you will see there are quite a few "not knowns" in this table. That is mostly because the physician did not ask questions or did not have information volunteered about different methods. There are also different methods of abuse not mentioned in here that did not warrant mention because of lack of numbers or the few people involved.

Table 11 outlines the physical findings. Section (a) indicates that only 19 of the 21 patients had objective signs of injury that were consistent and compatible with the history and/or strongly suggestive of the allegations. Two patients had no objective signs of injury. This includes the one patient I mentioned earlier, who was not examined, and a second patient who had no visible physical signs but did have what was referred to as soft tissue tenderness, that is, if one examined the patient--him or her; I do not define the sex of this patient--there was tenderness in most parts of the body, but no visible signs.

Section (b) of table 11 indicates the area in which objective physical signs were seen by the physicians examining. I would just like to remind you that parentheses refer to the other physicians who submitted cases to me.

I would just like to go through the notes, although the figures are self-evident again in here. Perhaps what I could comment on is the fact that bruises and abrasions and lacerations occur mostly to the head, neck and upper extremities, followed by the abdomen and chest. In one case in which the patient claimed he had been--"strangled" is not the word used--"choked with hands," fingerprint bruising and abrasions were observed by the examining physician. In another case, the examining physician noted bruising that would result, according to this physician's report, from a belt buckle being pressed firmly into the neck. The patient claimed he had been choked with a belt tied tightly around his neck.



In three cases, red raised parallel lines were observed in the wrist area, which was strongly suggestive of tightly applied handcuffs. I have photographs available that I'll proceed with in a moment. In one case, fingerprint bruising was evident on the forearm, which the patient claimed the police officer had squeezed tightly.

Two patients exhibited dental abnormalities resulting from alleged blows to the face. In one case, the examining physician found a fresh fracture of a tooth with blood still present along the fracture line. In the second case, two false teeth that had been cemented in place were dislodged following an alleged blow to the face. The examining physician saw the teeth and the area from which they were dislodged.

Before proceeding to table 12, which is really an exhibition of photographs, I would like to request and receive a commitment from the chairman and members of the committee that the photographs I have will be returned to me immediately after they are viewed by members of the committee. They are for the committee's viewing only at this time and not for submission. I would like to have that commitment. I would like to take these photographs home with me today.

The Vice Chairman: Is the committee agreed to personal inspection of the photographs?

Dr. Berger: The photographs are in envelopes and can be taken out. The case number is identified on the envelope. I really have nothing further to say until the committee has viewed these photographs. As I say, that are for viewing by the committee members only.

Mr. Breithaupt: Mr. Chairman, while Dr. Berger is waiting as these photographs are viewed, could I ask him whether the material that makes up this report has been made available to the Metropolitan Toronto police commission or to the chief of the Metropolitan Toronto police force. Have there been any responses, if so, with respect to the variety of items and occurrences he has told us about this morning?

Dr. Berger: None of the information in this presentation was made available to any of the individuals or groups you have mentioned. This forum here is the first time I have ever released this information to anybody. Therefore, I have obviously had no responses from anybody.

Mr. Breithaupt: Is it your intention, now that this is a public matter, to expect a resolution of these matters or some investigation by either of those two authorities?

Dr. Berger: That is not my intention, and I think that will become clear in my concluding statement.

Mr. Kennedy: Just while the photographs are being passed, if these allegations are substantiated or as they are reviewed, do any of the people involved give a reason as to why this took place? Was it to obtain confessions or was it in response to a conflict of some kind? Did any evidence come forward to the medical profession in this regard?

Dr. Berger: I can only give you a personal anecdotal response, because this information was not recorded in the information I received from the other physicians, nor was it recorded by me. It is really not relevant to me or to other physicians why this happened particularly. Some patients volunteered that information. I cannot tell you how many.

My impression from the patients, and again I must qualify it by saying I cannot substantiate it, was that one reason was to assist the police officers, particularly in cases where they were having difficulty acquiring evidence to obtain information. Another reason, I believe, in some cases, and I am not quite sure this happened, was a confrontation with the police.

Mr. Kennedy: So really you cannot draw any conclusions as to why these incidents allegedly occurred?

Dr. Berger: No, I am not drawing any conclusions on anything.

Mr. Hilton: Dr. Berger, you spoke about the need for independent review?

Dr. Berger: Yes.

Mr. Hilton: Are you aware under the provisions--incidentally, have you read the proposed bill?

Dr. Berger: Yes.

Mr. Hilton: Then you are aware that under the provisions of that bill a person may make a complaint to the office of the PCC as well as to police officers?

Dr. Berger: Yes.

Mr. Hilton: That it can be made orally or in writing?

Dr. Berger: Yes.

Mr. Hilton: Presumably, then, it can be made by a mere mailing to the office of the PCC.

Dr. Berger: Yes.

Mr. Hilton: Are you also aware of the provisions of section 15(1) of the bill? If I may, I will read it: "Where a person who has made a complaint is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of the board," and the board here is the board established under this bill, "or with action taken by the chief of police under clause (d) of subsection 1 of section 10 or with a decision of the chief of police that no action is warranted, he may request the public complaints commissioner to review the matter."

Therefore, I respectfully submit he has access, despite what the chief may do or despite what the force may do, to the PCC. Are you aware of that?

Dr. Berger: Yes, I am aware of that. I would like to respond that I do not think it addresses the reason I am here today. I will address your response more specifically in my concluding statement. That is not my concern, anything you have talked about.

Mr. Hilton: May I inquire what your concern is then.

Dr. Berger: My concern is that the complaint be registered in the first place. I will get into that. I think it will become clear as I get into the concluding statement.

The Vice Chairman: Perhaps we should wait for that before we get into the questioning.

Mr. Philip: We have no objection to his continuing with his brief. We can look at the photographs while he makes his presentation.

The Vice Chairman: People can be listening while they are scanning the photographs at the same time.

Dr. Berger: Table 13 indicates, as I already mentioned, that only one complaint out of the 21 cases went forward to the police bureau. In that particular case, medical evidence was never solicited. I should like to read my entire statement on the review of the 21 cases I presented today, and the issue of independent civilian review of police complaints.

The data presented today is descriptive only and not subject to statistical analysis. The patient population of 21 individuals alleging police misconduct is highly selective. The patient population contains only those patients who complained to a professional, those patients whose lawyers know of physicians who would examine their clients, and those patients for whom a doctor, willing to examine victims of alleged police abuse, was available at the particular time a doctor was required.

There was no standardization of history taken and physical examination among the four physicians, and this is evident in the number of "not knowns" in certain categories in the tables. Certain physicians were more experienced than others in examining victims of alleged abuse. Those physicians also had a greater degree of knowledge about human-inflicted injuries. Personal bias and subjectivity of any of the physicians could influence the history-taking and description of observations. Personal bias and other subjective features of medical examinations are usually accounted for in studies by proper scientific method. However, proper scientific method would inevitably involve unethical professional behaviour in a study of police abuse.

Other uncontrolled variables in this presentation of the 21 cases include the length of time permitted by authorities to examine the patients, in some cases no more than 10 minutes, and the presence or absence of police or prison officials during the examination.



Because of the biased patient selection, lack of standardization in interviews and examinations, differences in physician experience and knowledge, physician subjectivity, varying lengths of examination time, the presence or absence of authorities and numerous other methodological problems, it is impossible to come to any conclusion based upon rigorous scientific standards about any issues of police behaviour that arise from the presentation of the 21 cases. Furthermore, it is impossible to prove in a scientific or medical sense that any patient included in the presentation was abused by the police.

However, issues do arise, and even though conclusions cannot be drawn, questions can and should be asked. It is one such question arising from review of the 20 cases of no complaint that addresses a fundamental issue of independent civilian review, which is the issue at the heart of the committee's hearings. That question is, are any of the individual types of allegations of police abuse, and you have seen examples in table 10, and any of the subsequent medical findings, and you have seen photographs of some of the findings, serious and credible enough to the extent that a complaint should have been registered at the time of the allegation? By way of illustration, if you can conceive of a case based on the information presented today, should the patient or his representative have taken the next step and complained to the police bureau? I should like to note that the question is not whether any of the allegations are true.

If the answer to that question is yes, then the only way to ensure that complaints are registered in future cases is by legislating independent civilian review of police complaints, for it was lack of the provision of independent civilian review that precluded complaints in 20 of the 21 cases on which today's presentation was based. And it is the same lack of that provision that will secure the failure of the proposed act, not only in improving methods of processing complaints by members of the public against police officers on the Metropolitan police force, but in encouraging members of the public to complain at all. The latter, to me, is the most terrifying prospect of any of the consequences predicted for this act by individuals and groups who have appeared to date before this committee.

The Vice-Chairman: Before I entertain questions from members, I have one question, if I might propose it to you, Dr. Berger.

I think the detail of your presentation is of interest to the members but, in regard to the two paragraphs you have set out specifically in your brief, that adds a certain caveat to the findings you presented to the committee. Because of that, I am wondering to what extent we should rely on the specific cases for some evidence of actual injury. In fact, as I take your brief, you are not suggesting these necessarily are validated cases, but only making the suggestion that they could be, based on what these patients have said to you.

I point out, in particular, your reference on page two to the fact: "It is not the role of a physician to decide whether the

patient is telling the truth, to determine who inflicted the injuries, nor to precisely define how and under what circumstances the injuries were inflicted. Proving the history to be true, proving who inflicted the injuries and proving how the injuries occurred are medically impossible and do not fall within the jurisdiction of medicine. The task of proving belongs to the jurisdiction of the judicial process with medical evidence being one of a number of considerations."

Then I think you reinforce that qualifier, if I can use that term, at the bottom of page 13 and continuing on page 14, where you say, "Because of the biased patient selection, lack of standardization in interviews and examinations, differences in physician experience and knowledge, physician subjectivity, varying lengths of examination time, presence or absence of authorities and numerous other methodological problems, it is impossible to come to any conclusion based upon rigorous scientific standards about any issues of police behaviour which arise from the presentation of the 21 cases. Furthermore, it is impossible to prove in a scientific or medical sense that any patient included in the presentation was abused by the police."

I think you mention that twice in your brief. You are issuing to the committee a caveat that while it raises a concern in your mind, this is not necessarily clear evidence that there has been police brutality. Is that correct?

Dr. Berger: I am not here today to provide evidence of police brutality. I am here today to show that 20 of the 21 patients I examined never lodged a complaint. That is my only concern and the only reason I am here today.

The Vice-Chairman: So, whether what they were saying to you was the truth or not, was not for you to judge. That is what you are saying. Is that right?

Mr. Mitchell: I have a supplementary along that line and I guess it will answer any questions I have.

The Vice-Chairman: I had Mr. Mitchell down and Mr. Breithaupt--

Mr. Mitchell: This is by way of supplementary. I will waive my turn.

The Vice-Chairman: You were down first to ask questions, but carry on.

Mr. Mitchell: My question is on the tables and so on that you presented. It is really the only question I have. Did you, as the physician--and I do not find it in here--make any attempt to try to find out what was the involvement of the person you examined, prior to his arrest?

Dr. Berger: What do you mean by "involvement"?

Mr. Mitchell: You are showing us possibilities of police brutality. You have not said that it could be proven or otherwise;

I grant you all of that. But did you try to find out whether, prior to the arrest, they were involved in some kind of activity which might have been the source of some of these injuries?

Dr. Berger: I did not. In fact, it is irrelevant to me. I do not care what they were involved in beforehand. That is not the matter that I am concerned with. That, I presume, is a legal matter.

Mr. Mitchell: You are concerned, I realize that, about the complaint procedure.

Dr. Berger: I am here today because of what I perceive as the main barrier to complaints being registered. When I examine a patient I am not concerned with what the charges were, or involvement or anything like that. That is irrelevant to my purpose for seeing the patient. That is not my task.

Mr. Mitchell: But I have some difficulty with that in that what you have submitted to us today is possible cases of injury being afflicted by someone in the police department. Am I right? I think if you are saying it is possible it could have been done elsewhere, one should also examine what the person was probably engaged in beforehand. In other words, could these injuries have been sustained in an activity which was the cause of his arrest?

Dr. Berger: I do not think you are right. I do not know if it is possible because they were never investigated. That is the reason I am here today. I keep saying the same thing repeatedly, that it is not my task to decide that. All I am here for today is to show why I think this bill is completely inadequate in encouraging members of the public to complain and have their complaints justly and fairly investigated.

Mr. Mitchell: Then I find some difficulty, doctor, understanding why, if you had concern at that time, you would not have proceeded further.

Mr. Philip: May I have a supplementary on that, Mr. Chairman.

Mr. Chairman: I thought it was an observation, not a question. You can bring up your point when you--

Mr. Philip: Then I would like a supplementary observation, Mr. Chairman. Is it not true that each of the people that you examined had counsel?

Dr. Berger: Yes, it is true.

10:40 a.m.

Mr. Philip: Therefore, it would not be your task to proceed with this but the task of their counsel, would it not? You were acting as a physician, not as a lawyer, to these people.

Dr. Berger: At the minimum it is not my task. I am not prepared to answer whose task it is, but it is not my task.



The Vice-Chairman: Mr. Mitchell, did you have any further questions? Mr. Breithaupt?

Mr. Breithaupt: I just wanted to work on one theme. I recognize from the comments Dr. Berger has made that the events which occurred and led up to these 21 cases that he cites are not in any way his involvement as a medical doctor. But there is one thing that does concern me, and I think you might well be of help to us in this.

Part of the practice that you have in dealing with matters such as this likely will result in your coming to some personal conclusions as to the adequacy of this system. You have said in your presentation, as to the last matter, the question is should any of these matters have resulted in the complaint procedure being brought forward. If the answer is yes, as I would think it would be, then the question arises why it did not happen. We are told that it is because of the reluctance to being hassled, the variety of things that might occur.

The Legislature in its wisdom has decided that this bill, in principle, is satisfactory and, therefore, a pattern of review of these complaints as set out in the bill is likely to be generally the case. Do you think, from your experience that the persons with whom you have dealt in these cases, or some of them at least, would likely use this complaints procedure if they could go directly to the public complaints commissioner where there was some thought of independent investigation, or at least the opportunity for that?

Dr. Berger: No. I think it is irrelevant where the complaint is registered. What is on point is who is doing the investigating.

Mr. Breithaupt: If the public complaints commissioner had the opportunity to decide who should investigate so that on certain occasions with a small staff of two or three investigators he could deal with the matter rather than the usual use of the police system, might that, in most cases, help resolve the problem?

Dr. Berger: It might help but only minimally. I think that the Legislature has a great task in convincing members of the public to have confidence in any type of complaints procedure. What I understand by your question is screening out frivolous or minor complaints that could be dealt with by the police. I think if there is a mechanism that is perceived as being fair by the public, then I would support that. I am just not sure it is not too late to convince the public that that will be fair, or that they will perceive that to be fair. But if that could be done, I think that obviously that would be much more efficient. Then the PCC could retain the authority to independently investigate what he feels are more major complaints. I think that would make the system probably function a lot more smoothly.

Mr. Philip: What is the fear, doctor, of the people you have talked to? The fear that there are going to be other charges laid against them or other repercussions, or simply the belief that they do not feel that they will get a fair investigation?

Dr. Berger: I did not go into much detail with any of the patients as to what exactly their fears were. Most of them--I am trying to be as objective as possible--just scoffed at the idea. Most of the patients I talked to scoffed at the idea of the police investigating anything. Counsel did not scoff at the idea but actively discouraged their clients from complaining because they felt that it would be detrimental to their clients' legal interests.

Mr. Philip: I noticed that a lot of the pictures were gory, but I still could not help but observe that many of the people do not belong to the minority groups that have been coming forward. This seems to be a problem that is not only of concern to minority groups but also to the majority group. Although your table shows that there is a large number of people from minorities who have come forward to you and been examined, there are also a large number of people from the majority group in your pictures.

Dr. Berger: I would first like to say--

The Vice-Chairman: I am sorry, I have to interrupt here, Mr. Philip. On what basis can you judge from looking at those photos of these people what their political convictions were or whether they belong to--

Mr. Philip: It had nothing to do with political convictions; it had to do with minority groups.

The Vice-Chairman: Or any convictions--just by looking at a photo.

Mr. Philip: Sir, with the greatest respect, I can tell if somebody is white or black and whether he is a visible minority or not. I think a visible minority has something visible about him.

The Vice-Chairman: Surely you don't judge people as being visible minorities by the colour of their skin.

Mr. Kennedy: A white person can be a visible minority.

Mr. Laughren: In Toronto?

The Vice-Chairman: Certainly.

Mr. Philip: Would you say, sir, that a good many of the people you examined were white Anglo-Saxons and not just new Canadians?

Dr. Berger: I think table four addresses your question. Six of 21 cases were white, Canadian-born. The rest were members of a minority but not necessarily a visible minority.

Mr. Philip: It is your position that were there to be independent investigation these people would have gone forward, perhaps with with advice from their counsel, and laid a complaint?

Dr. Berger: Absolutely. I have checked this out with some of the counsel. Out of personal interest I have also talked to lawyers who have nothing to do with these cases and asked them their opinion. It seems to be the unanimous reaction of anybody I have talked to, although I don't pretend to have done a wide survey. It is actually shocking to me and frightening.

Mr. Philip: Admitting that it should be of concern to us no matter who is abused, would you, none the less, say that a number of these people had not been in trouble with the police before, had not had any trouble before the courts, or would you know that?

Dr. Berger: I have absolutely no idea.

Mr. Philip: Thank you, Mr. Chairman.

Mr. Kennedy: I have a couple of questions. Doctor, you mentioned earlier that other than examining the patient you didn't feel there was an obligation to go beyond that in reporting to any other authority, depending on the results of the examination.

Just as a point of clarification, is there not an obligation by physicians to report certain cases? I know there is with alleged child abuse, and I think with a patient who has obvious gunshot wounds. Are there other types of injuries or wounds that physicians would report? Could you clarify that for me?

Dr. Berger: I would be happy to clarify it. As far as I know, the only legal obligation that physicians and, for that matter, anybody in the public has, thank God, is to report suspicion of child abuse. It was a long time coming. I think that is a good analogy for these cases, by the way, if you wanted to pursue that.

Secondly, there are no other types of injuries that I am aware of where a physician is required to report anything to the authorities. A year ago, I went to a conference on confidentiality, and it was a major complaint of the Metropolitan police that physicians were not required to report injuries and gunshot wounds to the police. I remember the police used the example that one is required to report gunshot wounds to a car, but not to a human being. That is as recent as my knowledge is on that subject.

10:50 a.m.

Mr. Kennedy: Section 14(1)(b) states, "the public complaints commissioner shall monitor the handling of complaints by the bureau and the chief of police." I presume this means all complaints. Would that be correct, Mr. Hilton?

Mr. Hilton: Yes.

Mr. Kennedy: It is not written in; it just says "complaints."



Mr. Hilton: If you would look back farther, when a complaint is registered in any one of the places in which a complaint can be registered, copies of the complaints have to be sent on.

Mr. Kennedy: I cannot conceive of a case of alleged abuse where the Commissioner would not be right on top of that situation almost to the exclusion of other cases. It would be a very high priority. I just can't conceive of that.

Dr. Berger: If the complaint is not registered, no one in the world is going to have the opportunity to be on top of everything, and that is the point of my being here.

Mr. Kennedy: Yes, but regardless of whether it is civilian or police investigating police, as the catch-phrase is, that would apply.

Dr. Berger: No complaint is going to be monitored, investigated or anything else if a complaint is not lodged. I am reducing it to the very first step in the process. It is not even that relevant at this moment whether your question is discussed beyond that. I just want to ensure the complaint gets registered, and this bill provides no incentive; in fact, it discourages that from happening. It would not matter to me that a PCC monitors it or anything else like that. If people are not going to complain, the bill is not going to work and, in my view, people will not complain under this act.

Mr. Kennedy: What would correct it so that they would complain?

Dr. Berger: I think I have stated what would correct it, and that is to have an independent civilian review complaints. I think then the Legislature would be inviting complaints that should be registered rather than hiding them under 13 tables somewhere.

Mr. Kennedy: Thank you, Mr. Chairman.

The Vice-Chairman: We have been talking about physical violence and brutality this morning. I regret to report to the committee, as I guess the members are now aware, unfortunately and most regrettably, it has been reported that President Anwar Sadat has died from the wounds inflicted upon him this morning in an assassination attempt which apparently proved successful. It was just reported that he expired.

Mr. Philip, you had a supplementary question.

Mr. Philip: Just one last question for the record. With regard to the pictures that we saw--I am glad in the case of some of them that I had breakfast an hour and a half ago--you took those pictures personally?

Dr. Berger: I took all of the pictures personally.

Mr. Philip: Therefore, you can personally verify that they are actually pictures of what you are describing?

Dr. Berger: Yes.

Mr. Philip: Thank you.

Mr. Laughren: When you examined these patients, even though it was not your job to pursue the matter of what happened and that sort of thing, there must have been some information volunteered by the patients--some expressions of anger or even fear from the patients. I suppose you would not keep track of that in your job as a doctor?

Dr. Berger: Doctors should keep track of a patient's response during any interview. It is part of the observation process during examination. Unfortunately, some doctors did not because they are not used to doing this type of examination. Second, when one is pressured for time, it is difficult to focus one's concentration facilities and observation in 10 minutes, when you are trying to take a history, examine a patient and everything else.

I remember one case particularly because I had to interrupt the interview with this patient at least five times. He kept breaking down, crying and trembling, and his voice was trembling and shaking. He was obviously in great fear. Again, that is only an anecdote, and I would not pretend to state that it means anything statistically, but that is the only memory I have offhand.

Mr. Laughren: But in every case they did tell you how they were injured?

Dr. Berger: Yes.

Mr. Laughren: In every case it was at the hands of the police?

Dr. Berger: I do not know. It was never investigated.

Mr. Laughren: No, but that is what they told you?

Dr. Berger: They claimed that it was from the police. I do not know if it was from the police.

The Vice-Chairman: Are there any further questions? If not, that is all, Dr. Berger. Thank you very much for your presentation this morning.

I understand the second witness scheduled for this morning is Edward Greenspan, solicitor, but because of prior court commitments he was unable to rearrange he will not be available to the committee this morning. So the committee will stand recessed until two o'clock this afternoon.

Mr. Piché: Mr. Chairman, before we recess, I have a point of order for this information to possibly be brought back this afternoon. If you recall, yesterday the chairman of Metropolitan Toronto, Mr. Godfrey, made the statement that Metropolitan Toronto council was in favour of and supported Bill 68. However, in a newscast yesterday on the Oakville TV station, which I saw twice, it was mentioned this matter was never referred to or brought up at all at Metro council.

Personally, I find this hard to believe. I wonder if we could get some clarification for this afternoon so that the committee would know they had represented themselves or all of Metropolitan Toronto. This was on Channel 5, the local CBC station.

The Vice-Chairman: Do you have any information that will shed some light on this matter, Mr. Deputy?

Mr. Hilton: Yes. I have met, along with the minister, with all the mayors in Metropolitan Toronto who were mayors at that time--Mayor Sewell was the mayor of Toronto at that time--with the exception of one, I believe, Mr. Redway, who could not attend the meeting. I do not know how far those mayors went in getting the affirmation of their councils, but I merely have to say that each and every one of the mayors was in--

Mr. Laughren: That is not Metro council.

Mr. Hilton: No, but that is why I say I do not know how many had a chance to talk to their members of council or members on Metro, but the mayors all indicated they and their councils--

Mr. Laughren: What is your point?

Mr. Hilton: My point is that if the mayors said their councils were, presumably their members of council who were on Metro council would also be.

Mr. Laughren: Is that Metro council?

Mr. Hilton: No, it is not.

Mr. Laughren: I am confused about the relevance of your comment.

Mr. Mitchell: I think what is being stated is that some of the members of the local council,s which were represented by their mayors during the discussions, fill a dual role by sitting on Metro council. I think that is what he said. Mr. Piché did not say that he was speaking for them all.

The Vice-Chairman: Mr. Piché had the floor.

Mr. Piché: Mr. Chairman, the indication that I received yesterday on the presentation from Mr. Godfrey is that Metropolitan council was in favour of this bill. It was mentioned, I think on two or three occasions, that they represent 2.6 million people or 1.6 million, whatever. Yet this newscast says they never discussed this at a council meeting.

Now when someone such as Mr. Godfrey and the other mayors come in front of this committee and they represent a certain group, they have to show they do. It is not themselves individually making the presentation. Also, if some other groups came in front of us and said they represented certain people and they did not, you realize what they would do to them. I think it is very important to get clarification for the record. I personally would like to know if this matter was discussed at Metro council. The point I bring to you--



The Vice-Chairman: I think your point is well made, Mr. Piché.

Mr. Piché: I am not through yet. When you represent 1.6 million people and, on the other hand, the mayor of the city of Toronto himself came in and said he was against some part of the bill, then that brings down the number of people from what was mentioned. All I am looking for--and I think it is important for this bill and for the committee and for the people of this city--is that this matter be clarified. Maybe the clerk in his usual good way could report back this afternoon by making maybe one phone call. Is there a resolution to that effect?

The Vice-Chairman: Mr. Piché, I would be glad to have the clerk contact Mr. Godfrey's office for purposes of getting some clarification of the statement that was made.

Mr. Philip: The point I think Mr. Piché has made is that our clerk should contact the clerk of Metro council. It isn't Mr. Piché's instructions, as I understood it, that we get some explanation from Mr. Godfrey, but rather that we get the fact whether or not there was a vote on Metro council. The appropriate channel then would be to go to the clerk for Metro council, not to Mr. Godfrey. Then if Mr. Godfrey wants to give some explanation afterwards, we would be glad to hear it.

11 a.m.

The Vice-Chairman: You did not hear me out. I was going to direct the clerk on the basis of Mr. Piché's observation to contact Mr. Godfrey's office and the clerk of the municipality to get the official records of any debate of this matter before the Metropolitan council. But certainly he should advise Mr. Godfrey's office of the fact clarification is being sought in the matter from the clerk of the municipality.

Mr. Piché: This is following a newscast that I personally saw on two occasions.

Mr. Philip: May I ask a question of Mr. Hilton, based on his comments?

The Vice-Chairman: Are you finished, Mr. Piché?

Mr. Piché: Yes.

Mr. Philip: I think it was a very constructive suggestion that Mr. Piché made, by the way, because I did not see the newscast and I am glad that somebody did. Regarding your suggestion that there was a meeting between the Solicitor General and the mayors and that there was agreement then on the bill, I assume that Mayor Eggleton was one of the mayors?

Mr. Piché: No.

Mr. Philip: Oh, that would have been Mayor Sewell. Therefore, what was before that group? Was it Bill 68? Bill 68 would not have been--

Mr. Hilton: Yes, it was Bill 68.

Mr. Philip:--in the form in which we have it now.

Mr. Hilton: Some amendments have been made since.

Mr. Philip: But essentially it was Bill 68 with very little change that was before them.

Mr. Hilton: I will add further that Mayor Eggleton was also consulted and his agreement was forthcoming as well, but he was not at that meeting with all the mayors. His change here did not come as a surprise exactly, but was a change from his original advice.

Mr. Philip: Maybe he had a chance to think about it and to examine the bill in greater depth. Was that meeting the first time they had seen it?

Mr. Hilton: No, no.

Mr. Philip: So they had an opportunity to go through it with their solicitors?

Mr. Hilton: That is right.

Mr. Philip: And the purpose of the meeting was to discuss the bill with them?

Mr. Hilton: To see if they concurred.

Mr. Shymko: Mr. Chairman, in light of table number four, which I think is probably at the very core of any aspect of discrimination in terms of police abuse and minorities, in order to get the right perspective and not to see this as a distortion in any way, we have a break--

Mr. Elston: A point of order, Mr. Chairman. We had opportunities to ask questions of individuals. This is not material.

Mr. Shymko: This is not a question on this.

Mr. Elston: We are not really looking at having points of view put in by individuals on the committee at this point, I understand. If there were some points of view he wanted clarification on, he should have been doing that when they were here.

Mr. Shymko: This is not a question to be addressed to the gentlemen in terms of that statistic. I simply make reference to a statistic in the report and I just want to ask a question of the chairman.

Mr. Elston: I think you can ask it some other time. If it is based on a submission, I don't think it is proper.

Mr. Shymko: My question will be reworded. It will not be based on the submission. I just wanted to know whether the Attorney General or anyone has a racial or ethnic breakdown of convictions in the Metropolitan area. To my knowledge, the police do not break down all convictions according to race or ethnicity of the individual who was convicted. My question is, is there such a statistic? If such a statistic does exist, I have not been aware of it.

The Vice-Chairman: Mr. Deputy, do you have any information to assist Mr. Shymko?

Mr. Hilton: I have no information on that, Mr. Shymko.

The Vice-Chairman: The police chief will be here this afternoon, so perhaps you could address that question to him at that time. Have you any further questions?

Mr. Mitchell: Mr. Chairman, I do not know whether you would want to entertain this at this time without the chairman being here, but we are due to begin clause-by-clause consideration tomorrow afternoon. Quite honestly, I do not believe we are going to be able to finish this by Friday. Rather, I was wondering, because of the demand on all of the members here--not just one specific person, but on a number--and the difficulty with substitution, whether we could approach the proper people to see if we could extend the clause-by-clause deliberations into a period of time next week and do away with the Friday sittings.

Mr. Breithaupt: Speaking to that point, Mr. Chairman, certainly I think that is probably practical because we will not likely be finishing much on Friday in any event. What we would do then, I presume, is simply use the time otherwise available to the justice committee--Wednesday mornings, Thursday afternoons, Friday mornings--and for several weeks perhaps we would be doing this bill. Estimates would simply have to wait a while. But I do not know that we need anyone's permission to do it. It depends on whether we think we can get through the bill or not. I rather doubt we can by tomorrow.

Mr. Mitchell: We may not.

The Vice-Chairman: I do not think we do need direction from the House on the matter, Mr. Mitchell, because the bill has been referred to us and it is our responsibility to report the bill back to the House at the earliest opportunity.

Mr. Mitchell: There is no time frame established for the finish of our deliberations.

The Vice-Chairman: That is right. Accordingly, it is quite apparent that we will not finish this matter before the House resumes.

There are two things I would like the committee to consider. One, while the committee was scheduled, I believe, to sit this Friday, it is causing some difficulties with out-of-town members, and while we should certainly start with the clause-by-clause



discussion tomorrow as scheduled, in view of the fact that the clause-by-clause debate on the bill is going to go beyond Friday, in order to accommodate some of the members of the committee, we should consider not sitting on Friday but certainly continue on a first priority basis with the clause-by-clause debate in the regular meeting dates of the committee during this session.

Mr. Philip: Mr. Chairman, with the greatest of respect, you are not the chairman of this committee. The chairman will have spent a lot of time, I would imagine, with the clerk preparing a schedule. We do have a schedule. Some of us have gone to some inconvenience in putting other things off to keep Friday open. It was scheduled. I do not know how a decision can be made without the presence of the chairman, who, no doubt, has worked on this, and by you as an acting chairman. It seems to me you are not the vice-chairman, I do not believe, but an acting chairman put in the chair for today in the absence of the chairman.

The Vice-Chairman: The vice-chairman.

Mr. Philip: Is there not a steering committee on this committee?

Interjection: No.

Mr. Philip: In the past, I believe--and this has happened on other committees--it seems to have happened that the Liberals and NDP asked for a steering committee so we would not waste the time of the committee dealing with things like this. What has happened under this majority government is that it has been voted down. I suggest it is not our job either to discuss this in the whole committee and waste the time of this whole committee or, indeed, discuss it in the absence of the chairman of this committee.

Mr. Mitchell: If I might respond to that.

The Vice-Chairman: Just a minute, Mr. Mitchell.

Mr. Laughren: Do we have a speakers' list?

The Vice-Chairman: For the record, I am sitting as the vice-chairman, duly appointed. Secondly, to my recollection, there was no dispute between the members of the committee as to whether or not it was necessary to set up a subcommittee to deal with procedural matters. It was discussed at the beginning and, with the consent of all parties, it was agreed it was not necessary because there were no contentious matters of a complex nature before us that required a subcommittee to deal with procedural matters, Mr. Philip. So, for the record, I suggest that the majority of the members here from the government side did not involve themselves in a conflict between--

Mr. Philip: That may well be the case. It may have been public accounts where that happened.

The Vice-Chairman: --you and the Liberal members in turning down any motion that there be a subcommittee. Your recollection is incorrect.

Mr. Philip: I would suggest to the committee, with the greatest of respect, there should be a subcommittee.

The Vice-Chairman: As far as waiting for the chairman, I have no objection to that. I simply put forward two things that I think have to be considered between now and Friday.

Mr. Piché: There is a motion on the floor here.

Mr. Mitchell: Mr. Chairman, I prefaced my comments with the fact that you might not wish to deal with it because the chairman was away.

Mr. Philip: Yes. I recognize that.

Mr. Mitchell: But if you would allow me, I would like to table for consideration when the chairman comes that the chairman consider the committee not sit on Friday and that we deal with the balance of the clause by clause during the continuation of the sittings.

The Vice-Chairman: Mr. Mitchell, the other point I want to make is that clearly the committee is in full session and I am fully in the position and have the capacity to deal with the matter but, as a matter of protocol, I do not intend to do so until I discuss the matter with the chairman. But any suggestion made by Mr. Philip that there is no authority for the committee to deal with it without the chairman here is preposterous. We will stand adjourned until two o'clock.

Mr. Laughren: On that point, why are you so anxious with the gavel? Surely we should be trying to get as much of the clause by clause done now because next week, when the House comes back, many of us will be on other committees that are going to be sitting immediately the House goes back. I am just one example and not the most important one, but I am an example of a member on another committee.

The Vice-Chairman: Most of us are. I understand your problem. The question will be raised tomorrow because some of the members have expressed that concern to the chairman and it will come up for discussion tomorrow. Mr. Michell has served notice of that fact. There is nothing to argue about at the moment, but give it some thought.

The committee recessed at 11:11 a.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
TUESDAY, OCTOBER 6, 1981  
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Treleaven  
Kennedy, R. D. (Mississauga South PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister  
McMurtry, Hon. R. R., Solicitor General  
Ritchie, J. M., Director, Legal Branch

Witnesses:

From the Metropolitan Toronto Police Force:

Ackroyd, J. W., Chief of Police  
Dickson, Superintendent W., Citizen Complaint Bureau  
Johnson, Sergeant C.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 6, 1981

The committee resumed at 2:07 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

The Vice-Chairman: This afternoon we have appearing before the committee John Ackroyd, chief of the Metropolitan Toronto Police Force; Superintendent William Dickson, citizen complaint bureau of the Metropolitan Toronto Police Force; and Sergeant Cullen Johnson of the Metropolitan Toronto Police Force.

'Chief Ackroyd, if you would like to proceed, we do have, as a previously filed exhibit, your brief, to which I presume you will be referring in your presentation either on a word-by-word basis or an overview basis, whichever way you wish to proceed. We as a committee are interested in hearing what you have to say to us this afternoon. Just for the record, it is exhibit 4 in our exhibits on file.

Chief Ackroyd: Thank you very much, Mr. Chairman and gentlemen. You have introduced the gentlemen with me. You told them who Superintendent Dickson is. Sergeant Johnson is on my staff as a researcher. I thought I would clarify that point. We welcome the opportunity of appearing before this committee.

As the chairman has indicated, we have submitted a written brief to you. It is not my intention to read that brief. What I intend to do primarily is to review some of the history of how we have handled complaints in the Metropolitan Toronto Police Force and to go through some of the various studies and highlight them. I do not intend to read the brief. That would be too time-consuming.

We do welcome Bill 68. We think it is a very progressive step forward in the changes that have evolved over the last 10 or 15 years in handling citizens' complaints against police officers on our force.

There have always been complaints against policemen, if you go right back through the history of policing. Up until 1965, those complaints were basically handled by personnel in the station. In other words, if a citizen had a complaint, he went to see the local divisional inspector or sergeant, and it was handled at that level.

In 1965, the decision was made that there should be a



separate complaint bureau. We formed that bureau, and we originally staffed it with three people. It was at headquarters. That was to relieve the responsibility from people who were right in the division working with personnel on a day-to-day basis, and to give it a form of independence right within the police force itself.

Let me review a couple of other points in the brief. On page seven, we state what former Chief Harold Adamson stated concerning the need for an effective complaints procedure, when he was appearing before the task force on policing. Then, as I say, we continued to expand and reorganize our own complaint bureau right up until, I think, the next point in history, in 1974.

At that time, at the suggestion of both Metro council and the Metropolitan Toronto police commission, Mr. Arthur Maloney was engaged to do a study of our procedure as far as the complaint bureau itself was concerned. Mr. Maloney studied that and submitted a report in May 1975; and this is covered primarily in pages eight and nine of our brief. Mr. Maloney made 53 recommendations as to how complaints against police officers should be handled; he also recommended a bill of rights for police officers.

The Metropolitan Toronto Police Force responded to the brief by Mr. Maloney and his recommendations by implementing, to the best of my knowledge, every recommendation we had the legal authority to implement, such as moving to a separate building and selecting staff sergeants and sergeants whom we felt were capable of going ahead in the organization. A further reflection of its being independent is that it is completely removed from any of the other 35 police buildings in Metropolitan Toronto in separate rented quarters on Yonge Street.

Brochures were prepared for citizens so that they knew all the avenues that were open to them as far as laying complaints was concerned. Forms were created for the handling of complaints, and the mechanics were set up so we could monitor those complaints, and monitor them in respect of the individual officer, so we knew if there were any patterns of complaints and where they were coming from.

Shortly after the Maloney report, Justice Morand sat on an investigation into police practices in Metropolitan Toronto, and he supported many of the recommendations Mr. Maloney made in his report. I think what is key at this point is that Arthur Maloney--I notice there has been quite a bit of discussion about setting up something independent and away from the police force to handle--recommended that the initial investigation of police complaints should be handled by the force itself.

Following that, in November 1977, Mr. Pitman submitted a report, in which he endorsed the Maloney model as a method of handling complaints against police officers. We have noted, on page 13, that he appeared on a television program and complimented the complaint bureau as a very innovative, progressive step forward and as doing "quite a magnificent job," to quote him.

In October 1979, and we allude to this around page 14 of our brief, Cardinal Carter was brought in and did a study of certain issues at that time dealing with the police force. He also endorsed the Maloney model of the police investigating initial complaints against police officers. He emphasized the right of police officers to have a bill of rights, and he endorsed in general that concept of handling police complaints.

In our brief, we have also drawn to your attention that complaints against police officers have been fairly static, with maybe a very slight decline, since 1976, and yet the force of our complaint bureau has grown from originally three, some 15 years ago, to 20 officers now assigned to that unit.

There has been mention of the figure of 90 per cent of complaints being resolved informally. I think, this year, looking at our complaints at the present time, just a little over 92 per cent of them have been resolved informally between the complainant and the police officer.

The next step in the evolution of this business of handling complaints against police officers came with the appointment of Mr. Sydney Linden in June 1979, and you people have all seen the end result of his appointment in the drafting of the legislation.

Again, a man like Mr. Linden has come in and studied this, and has recommended that the initial investigation, with an interim report being submitted within 30 days, should be done by the Metropolitan Toronto Police Force. He has implemented most of the recommendations of Arthur Maloney in his model as well, although there are some slight differences. He strongly agrees with Mr. Maloney, Mr. Justice Morand, Mr. Pitman and Mr. Carter that the initial investigation should be done by police officers.

It is interesting to note that Bill C-69, the Royal Canadian Mounted Police bill for dealing with complaints, also recommends that the initial investigation should be conducted by police officers, with a form of review following that.

Most of these people have commented that schemes other than having the initial investigation conducted by police officers within the force have failed.

On page 21, we refer to the issue of the burden of proof, and we feel in the Metro force that "beyond a reasonable doubt" is the proper and acceptable standard for dealing with police complaints. This was strongly endorsed by Mr. Maloney. We have quoted in our brief from people such as Mr. Albert Reiss and others, on page 22, saying that is the proper standard for dealing with complaints against police officers, that particular burden of proof.

On page 24, we talk a little bit about informal dispositions. We think it is essential, because of the high level of resolution of these complaints informally, that that remain in any form of legislation that deals with police complaints. Again, that has been endorsed by most people who have studied this

problem and was included in the new RCMP bill dealing with complaints against police officers.

On pages 26 and 27, we talk a little bit about discipline. I think what is imperative here is that you do not erode the powers of any chief of police to control discipline within his own police force. You can set up a system where you have one kind of discipline going in one direction and another discipline procedure in another direction. I think that erodes the authority of any chief of police.

Chiefs of police are appointed by boards of commissioners of police in this province. I think they are the people you should hold directly responsible for having these complaints properly investigated. It is very dangerous if you start to erode that power you have vested in any chief of police.

We feel that the review provisions in the bill are adequate. We feel they are fair. There could be a complete review of the investigation; there could be, in a sense, a new hearing or a de novo trial held. People from the community can sit on a three-man panel dealing with serious cases. And, of course, the public complaints commissioner can do everything--he has the same powers as the chief of police as far as discipline is concerned--from dismissing the police officer from the force down to reprimanding him. He has that much authority in a review situation. There is a provision, of course, for an ultimate appeal to a divisional court on a point of law.

In closing, I would like to say that I strongly believe this bill deserves a fair trial. There has been quite a history, as I have reviewed very quickly with you, of how complaints against police officers have been handled in this particular city. When Mayor Sewell was mayor, all the mayors in Metropolitan Toronto--and there are six of them--plus the Metro chairman, the police commission, the former head of the police association and the present president, and the former chief and myself have all indicated that we want to do everything within our authority to support this legislation, to do everything we can to make it work, and that has always been the position taken by all those people.

We really feel this bill should be given an opportunity to be tried in the city to see how it works, and we can assess it from that point on.

The Vice-Chairman: Thank you, Chief Ackroyd.

Mr. Minister, do you have any comments at this time?

Hon. Mr. McMurtry: Chief Ackroyd, you have always stressed to me, as we have discussed matters of mutual interest with respect to effective law enforcement, the importance of the chief of police having this responsibility and accountability for internal discipline.

You touched briefly on this, but am I correct in understanding that you feel very strongly, as do other chiefs of police across this country, that if this responsibility for the



initial investigation is taken away, it will significantly undermine your ability to maintain a proper standard of discipline?

2:20 p.m.

Chief Ackroyd: Yes, I briefly alluded to that, Mr. Minister. I feel very strongly that that authority should not be split, and I have indicated that in the brief. We have charged the chief of police of this city and of every other city in Ontario--but this bill applies only to Metropolitan Toronto--with the responsibility of disciplining a police force.

I would not want to split that into two avenues and have a completely independent investigation that took discipline someplace else, particularly when such a high number of these complaints are resolved. Many of them are very minor in nature, and approximately over 90 per cent of them are resolved by informal resolution.

To have two forms of discipline would be very wrong, I think. It usurps the power of the chief of police, who is charged with the responsibility of running the force. If you are going to take some of that authority away from him, I think the effects could be very disastrous.

Mr. Breithaupt: Could I ask a supplementary on that point, Mr. Chairman? Chief, could you advise us, just so we have the up-to-date figures, the number of uniformed and civilian personnel that are with the Metropolitan Toronto Police Force and the number of disciplinary matters that are dealt with over a year, approximately?

Chief Ackroyd: Our authorized strength is 5,402 police officers. We are about 20 short, and that varies from day to day. I am on vacation right now; so it could have varied today. Someone may have resigned. We have about 1,300 civilians; so we have a total strength of approximately 6,700 people.

Talking about discipline charges, ballparking for you over the last five years, we have charged approximately 500 police officers--that is an average of about 100 a year--under the discipline code. The figure I have shows 733 charges against police officers; that is just slightly below 150 discipline charges a year. We have a full-time trial preparation officer and a full-time superintendent of trials.

In addition to that--you just raised the question of discipline--we estimate that about 75 to 100 criminal charges are laid every year by our own force. It is down this year; as of today, 35 criminal charges have been laid by this force against police officers. Last year, 97 criminal charges were laid for the year.

We would not want you to think that 5,402 people never do anything wrong. We are well aware of some of the disciplinary problems within the force.

Mr. Breithaupt: When you refer to these 150 per year, on

average, can you break those down into any readily understood categories of the seriousness or otherwise of the variety of charges that can come forward for internal discipline? This is just to get a sense of the kinds and proportions of the things you have to deal with.

Chief Ackroyd: Let me just give you the total for the five years: neglected duty, 264 charges--these are charges, not bodies--discreditable conduct, 229; insubordination, 123; consuming liquor, 47; deceit, 46; damage to equipment or clothing, 10; unlawful use of their authority, 12; corrupt practices, four; unfit for duty, one; unnecessary violence, one; breach of confidence, four; and damage, two--for a total of 743.

The Vice-Chairman: Chief, as you can gather, following your presentation we will have questions from the members of the committee. I would like to start off with one question, if I might.

I was particularly interested in knowing what the procedure is that has been devised by you, or the department as a whole, with regard to the representatives you would have an opportunity to appoint to the complaints board. Under the act, as you know, there are three areas of appointment: people trained in the law, those who would be appointed by the Metropolitan Toronto council and those who would be appointed on recommendation of the Metropolitan Toronto police commission and the police association.

Has any mechanism been devised as to how that selection process would be implemented? Or what process has been developed at this time? Or are you that far down the road in developing your plans?

Chief Ackroyd: At this point I would have to almost tell you what I am hearing rather than what I know. What I understand is that Metro would advertise those positions and go through that formality. I do not deal with that personally, but I understand that is what would happen there.

We have not had any discussion, but I would assume what would happen within the force is that the president of the police association would sit down with the chairman of the police commission and submit to the public complaints commissioner a list of the people who we would perceive sitting on those panels.

The Vice-Chairman: There has been some suggestion by some of the witnesses who have appeared before the committee that, by reason of the nature of the source from which the recommendations were coming, those representatives on the board would have a distinct bias in favour of the police. Do you have any observation with regard to that criticism?

Chief Ackroyd: I think my first observation would be to dig out the actual recommendation of Mr. Arthur Maloney. I just scanned it the other day and noticed, on page 246 of his report, that he recommended a pool of somewhere in the neighbourhood of 60 people. He had 15 appointed by the police association, 15 by the chief and the senior officers of the force, 15 from Metro council

and 15 legal people. I think this is a far better balance than the previous recommendation by Arthur Maloney.

I would hope that the police commission and police association would come up with names of people who are responsible citizens. When you talk about citizens "being pro-police," I think it is imperative that citizens who serve on a committee like this, which is to hand out discipline, have to think of the community. Being pro-police might mean they are very hard on police officers and very severe in how they deal with them, because that is one way of protecting the citizens from any abuse of authority by police officers.

I am not sure what you mean when you say "pro-police." I would hope anybody who is pro-police would be a good disciplinary. I am very pro-police, having been in the business 35 years now, but I still believe, to maintain a good police force, you have to have good discipline.

The Vice-Chairman: I am simply reiterating what some of the critics have said; they felt there would be a distinct bias in favour of the police by those particular appointees. I appreciate your observations.

Mr. Laughren: I have two questions. It has puzzled me from the beginning, and perhaps you could put my mind to rest, why the police themselves, particularly the Metropolitan Toronto Police Force, in view of the fact that they accept the need for the complaints procedure and for a bill, have over the years added to their staff in the complaints section--from three to 20, I believe you said.

Chief Ackroyd: That was 15 years.

Mr. Laughren: Given that and the fact that there is going to be this bill in place, which you support, why would you not want the process to be completely above question about independence right from the beginning of the process? Why would it not make you feel relieved that, right from the beginning, there was no question of any kind of bias on the part of the investigation because the initial investigation was done by the police department itself?

Chief Ackroyd: I think I made that clear a few minutes ago, but let me repeat that. I think the moment you let any chief of police, in a sense, avoid the responsibility of investigating complaints against his own personnel, it is like saying you can be the nice fellow here, you can be the good guy; let us hand this responsibility to someone else.

I do not agree with that philosophy. I think every chief of police who is appointed in this city, or in any other city, should be charged with that responsibility. As I say, I welcome some type of independent review, because people have been indicating that this complaint bureau is not doing an adequate job.

2:30 p.m.



When we met with Dr. Smith, the leader of the Liberal Party, one of the things he asked was if we would have any objection, for instance, to coming in ahead of time if there was some undue delay or some matter of improperly conducting the investigation. The reason I bring it up--those are more the words used in the legislation, but that philosophy--is that I said I would not have any objection to that, because somebody is suggesting that we are improperly conducting it.

I think it is our responsibility, and I think the review will point it out. During this three-year pilot project you are going to find out if there has been any improper conducting of or undue delay in any of these investigations.

Mr. Laughren: You are not worried about that always being there, the charge that it is not completely independent from the beginning? That does not bother you?

Chief Ackroyd: No, because of the fact that it can be completely reviewed. People are talking about covering up. The witnesses are not going to disappear. They are not going to be taken away. Somebody can go back. They can reinterview all of those witnesses. They can completely resurrect all of the evidence they would like to give against the police officer. This bill adequately provides for a complete and independent review of every investigation.

This may be an interesting point. I have been chief now for nearly 18 months. The present mechanics are that, if people are not satisfied with the complaint bureau, they can first of all go to our police commission and then to the Ontario Police Commission. What I find extremely interesting is that during those 18 months that I have been chief--unless some were there while I was on vacation--two people have been to the Metropolitan Toronto police commission who were dissatisfied with the investigation done by our complaint bureau.

When I see those statistics, showing only two people coming forward in that period of time--only one, to my knowledge, has gone on to the Ontario Police Commission, which is an arm of the provincial government; and, as I have said, over 90 per cent having been formally resolved between the complainant and the police--I cannot understand anybody indicating that he wants some outside body to come in and look at all this.

Mr. Laughren: Well, they do. The second question is a more difficult one for you to answer, I suspect. It has to do with the number of discipline charges. You indicated a list of those and the number in the last year, I believe.

Chief Ackroyd: The last five years. The figures I gave you are the charges over a five-year period.

Mr. Laughren: Sorry, a five-year period.

Chief Ackroyd: Yes, sir.

Mr. Laughren: One of the statistics that surprised me

was the one for undue use of violence--without drawing any mean conclusions to my comment--which showed that there was only one in five years. I cannot speak for other members of the committee, but I have had the sense that this was one of the concerns about making sure there was an independent investigation and the whole process about the bill. Is there not a relationship between the number of charges and the fears or the complaints out there? Would there not be a closer relationship than that?

Chief Ackroyd: I can give you an opinion on that. I have to feel that the reason that figure would be low is that, under our rules and regulations, if there is any evidence of a police officer using excessive force, or abusing his authority under the Criminal Code to use force, anything that is of a criminal nature has to be completely reviewed by a crown attorney. In other words, I will not let the investigators handle anything that may be of a criminal nature without also conferring with the crown.

That, in a sense, is a further sense of independence. The crown has to review all of the evidence as well, and many of those cases result in criminal charges. It would be only normal when it gets into an excessive amount of force. If you saw a very high figure there, if you saw something like 50 people charged with abusing their authority as regards using force, you might think we were using the Police Act to cover up criminal charges.

It is normal that it is quite low. The figure was one in five years. Then you see 75 to 100 appearing in criminal courts every year--I can think of certain cases if you want to discuss individual cases--of police officers charged with robbery, and we have some charged with assault and bodily harm.

Mr. Laugren: What about the numbers of complaints about the use of violence?

Chief Ackroyd: I would have to ask Superintendent Dickson to answer that. I did not bring any figures of how many of the complaints involve violence. I would like to make some comments on that, though, when he answers it.

Hon. Mr. McMurtry: Just a supplementary, Chief. Do we have any statistics with respect to the number of charges involving violence that have been laid against police officers during the five-year period?

Chief Ackroyd: No, sir, I do not. But some of those other charges could involve some violence. When you talk about unnecessary use of force, you are getting into the criminal area; most of them, like the two officers who were charged with robbery and some of those charged with assault, are dealt with in the criminal courts.

Mr. Breithaupt: A lot of them go immediately.

Chief Ackroyd: They immediately go to that step. If the evidence is there and there are reasonable and probable grounds, once there is excessive force, quite often they proceed criminally.

Superintendent Dickson: To the end of August this year, of 518 concluded complaints, 246 were regarding assault.

Mr. Laughren: What period of time was that?

Superintendent Dickson: This year to the end of August.

Mr. Laughren: A 12-month period?

Superintendent Dickson: No. Just to the end of August, an eight-month period.

Mr. Laughren: I'm sorry. From the beginning of January to the end of August there were 500 and some complaints?

Superintendent Dickson: Out of the 518 complaints, 246 were regarding assault.

Mr. Laughren: How many of those would result in either the process that Chief Ackroyd was talking about or discipline within the force?

Superintendent Dickson: There have been 35 charges laid under the Criminal Code this year, and they are all regarding assault.

Mr. Laughren: What would happen to the other 200, roughly?

Superintendent Dickson: Of the 246, 108 of them were unfounded; they did not occur at all.

Mr. Laughren: The complaint occurred but the offence did not?

Superintendent Dickson: The complaint occurred, but the investigation revealed that there had been no assault; so that has to be taken off right away, because it did not happen, the complaint was unfounded.

The Vice-Chairman: What was that number again?

Superintendent Dickson: The number was 108.

Mr. Vice-Chairman: That were unfounded or withdrawn?

Superintendent Dickson: Right.

Mr. Laughren: That leaves about 100.

Superintendent Dickson: It leaves 138.

Mr. Breithaupt: But basically half the charges involved the assault matter and half of those were not found to be true.

Superintendent Dickson: The 35 charges we are talking about are all assaults. The majority of those have not been tried yet. In fact, I do not have the figures for this year, but there



are very few of them that have been tried. Trials being what they are, they are put off for several months. Very few of those 35 have been tried.

Mr. Laughren: Out of that 135, there must have been some kind of foundation to the charges. Is that correct?

Superintendent Dickson: No. The events occurred. I am saying 108 of the events complained of did not occur. Sixty-three of them occurred but were quite legal; that is, the officers used force but in a proper and lawful manner, and so they were exonerated. Seventy-two of them are the tossups; some result in criminal charges but in some there is no substantiation, no independent evidence to prove one way or the other that the complainant is telling the truth or that the officer is telling the truth.

Mr. Laughren: How many?

Superintendent Dickson: Seventy-two. These 35 charges we are speaking about fall into that category, and they are to be tried by court. Then we had these three other cases that we substantiated; that is, the complaint bureau substantiated the complaints but they have not been tried yet.

Mr. Laughren: Haven't been what?

Superintendent Dickson: We substantiate a complaint and then we take action on it; that is, in the form of a charge or some action being taken. But that is our opinion that the complaint is substantiated; it has not been verified by a trial.

Mr. Laughren: I see.

Chief Ackroyd: When you raise this question about some of these complaints, I think you gentlemen are all aware that when you are arresting somewhere in the neighbourhood of 100,000 people every year, not everyone peacefully accompanies the officer to the local police station, particularly the ones that have to be taken in that are not released on an 8-1.

Quite often the police officer finds himself in a position of having to resort to the use of force to effect his arrest. He is protected under the Criminal Code. In other words, if you look at the Criminal Code, of course he is given tremendous authority when it comes to the use of force. Police officers become responsible when they use excessive force. And they are not only criminally responsible and civilly responsible but they are internally responsible as well. So they are responsible in three different ways.

In many cases when I have talked to people personally and discussed this subject of complaints following the use of force, the officer has admitted he used force; he has admitted the amount of force he used. As you have all been made aware, whenever an officer uses force on our police force, he must submit a full report on it; that must be documented every time he uses force.

2:40 p.m.

Mr. Laughren: I am sure committee members will correct me if I am wrong in any of the figures I will use. This morning we had a doctor appear before the committee who testified that he had treated 21 persons who had evidence of damage to themselves and who claimed that it involved excessive violence and force on the part of the police, and that the legal counsel, I believe in every case, had indicated the client should not launch a complaint in his own best interest. I am wondering if you feel that is completely unjustified legal counsel or whether you think there is perhaps some grounds to the fears of these people.

Chief Ackroyd: Again, not knowing the cases and not knowing the facts, I can only give you a reaction. I have talked to solicitors. They would much prefer to lay their own criminal charges. They would much prefer to proceed civilly. They may feel by coming to the complaint bureau that the police might become aware that they are going to proceed criminally or civilly or both. That may be their reason for not sending their client to the complaint bureau. I don't know. If that is their reason, I would understand if they wished to proceed either criminally or civilly or both. But if they are not coming to the complaint bureau because they do not think the matter is going to be properly investigated, that would disturb me.

Mr. Laughren: I think that is one half of the fear. The other half is recriminations following the laying of the complaint. That is in the minds of some of those people. That is our concern.

Chief Ackroyd: I have yet to recall reading a letter where anybody has ever written to me and indicated that something happened to them as a result of a complaint. It has never been brought to my attention.

The Vice-Chairman: I think, Mr. Breithaupt, you had covered your questions in the supplementary at the outset.

Mr. Breithaupt: There is a supplementary that would follow upon that one point. Obviously, from the chief's comments, he wants to observe upon the fact that very few persons move from the complaint procedure to either the Metro police commission or to the Ontario Police Commission.

That may well be. But the theme we have received from a variety of groups that have appeared before us and from individuals--that is not to say they all represent everyone in the visible minority community, which apparently is the most affected--is that many will not come forward to launch a complaint in the first place because of the independent review theme.

This was part of the theme we heard this morning from Dr. Berger as he suggested from the evidence he had received that there were a variety of people--certainly nearly all in this group he presented to us--who for reasons best known to themselves thought it wasn't worth their while.

I suppose there is not much you can do about that if they don't choose to come forward, other than be open to the suggestion that you would like them--because it is in your own interest to discipline your police force--to come forward if such claims are valid.

Do you feel that having the opportunity of separate complaints being laid to the commissioner rather than to the force may bring some of those people forward? Do you have any sense that you might be able to overcome this hurdle, which at least they seem to think is there?

Chief Ackroyd: The provision, as I interpret Bill 68, is that if a citizen does feel that way--if he doesn't want to go in and see the superintendent's staff--he can go directly to the public complaints commissioner, fill out the form and make his complaint.

As long as he makes a full statement so that we have the facts, if the public complaints commissioner instructs us not to go near that individual to turn the investigation over to us, I suppose we wouldn't even go near that individual. We would conduct the investigation to the best of our ability and put in a report within 30 days; if we do not put in a final report, an interim report is required.

The citizen in a sense has that flexibility to go right to the public complaints commissioner and launch his complaint there under the present bill, if I have interpreted it correctly.

Mr. Elston: If I might put a supplementary in there: How effective can your investigation be if you do not have contact with the citizen?

Chief Ackroyd: I will give you an opinion, but then I think I will let Superintendent Dickson answer that.

I think it would hinder an investigation. That is why I said in my remarks if he made a full statement and his investigators took it, if they were properly trained in the art of investigation and took a full and complete statement, I think our police officers then could go out and interview all the rest of the witnesses, look for independent witnesses, go to the scene and do whatever had to be done--I have to talk in generalities, not knowing the individual complaint or what it is about--get statements from all of the officers concerned and put in, to the best of our ability, an investigation.

Maybe the superintendent could add to what I have said. He is living with those people every day and handling these investigations every day.

Superintendent Dickson: The only difficulty we have is when the complainant just won't talk to anyone. If we received a statement such as the chief has mentioned, we could investigate it. It is only when they won't talk to us at all that we are up a pole.



Mr. Elston: Even though a complaint may be launched, if a statement is written out by the individual and then forwarded to you by the commission or even by letter directly from the complainant, your investigation would be very much hampered by that?

Superintendent Dickson: That is right. Obviously, the best way to find out what happened is to speak to the people who were there. If they won't talk to you, then you are hampered.

Mr. Elston: In fact, then, although it has been suggested, and I know it is a possibility, chances are you wouldn't be able to do a very thorough investigation if the complainant is not willing to deal with the investigating team?

Superintendent Dickson: The complainant would have to give us whatever information he has, including any witnesses he might have.

Mr. Breithaupt: Of course, many of these situations involve the complainant and a constable. I suppose there are a goodly number in which there is no other source of evidence.

Superintendent Dickson: That is essentially the not-substantiated category I was talking about. About a third of your complaints fall into that category, where it is a one-on-one situation and there is no independent evidence.

Mr. Breithaupt: But you would look for a pattern in case that unsubstantiated complaint against a constable found the constable showing up in a variety of other unsubstantiated situations?

Superintendent Dickson: That is right. We keep track of that. I have the computer printout on that every morning.

Chief Ackroyd: I can comment on that. That is one of the benefits I see of (inaudible) some people say about the number of complaints that are unsubstantiated.

I don't particularly want to name the officer, but we had an officer come forward looking for certain privileges within the force just recently. In checking his file, I found he had four complaints of using abusive language to citizens over a two-year period. It was dealt with at the commission level, and I was opposed to him being given certain special privileges. The reason I am not saying what they were, or I would prefer not to, is I think they would identify the officer.

We adjourned the matter for two weeks for me to bring in further evidence regarding this particular officer, and in that two-week period there were two further complaints of identically the same nature against him; so we told him he was not going to be given the special considerations that he requested, and he resigned from the force.

So, even though the complaints are unsubstantiated, there is the fact that we are monitoring them, the fact that we monitor the

ones of a racial nature, the fact that we monitor the number of complaints there are and bring the officer in--if there are three complaints against him in a 12-month period, he is brought in in front of my executive officer and spoken to.

Many of these people are moved out of front-line duties because of their actions. Even though the complaints show up in the records as unsubstantiated, they are dealt with to the best of our ability.

Mr. Breithaupt: Do you keep a pattern, as well, with respect to the location of these complaints so that it might be that a supervisory person within a division was not dealing with several individual matters as thoroughly as you would prefer?

Chief Ackroyd: We know what division the officer is in, what platoon he is on. We even know who his sergeant and staff sergeant are in a particular division.

Mr. Breithaupt: Again, if the pattern there was, let's say, some acquiescence in a certain attitude by the people in a platoon or in a certain situation, this would become apparent?

Chief Ackroyd: It would surface.

The Vice-Chairman: Mr. Philip.

Mr. Philip: I was wondering, with all the supplementaries, if I would get a chance to ask any questions at all, Mr. Chairman.

The Vice-Chairman: I think you have had more than your fair share of time, Mr. Philip.

Mr. Philip: I guess I have to agree with you there, Mr. Chairman.

The Vice-Chairman: All right. Carry on.

Mr. Philip: I would like to ask Chief Ackroyd a few questions. First, I must say that any time that I have written to you, sir, I have always received a fairly prompt reply, not necessarily by you personally, but by one of your officers, or indeed a telephone call informing me what has been done.

Mr. Breithaupt: You are in the 90 per cent.

2:50 p.m.

Mr. Philip: In very few instances have I written about a complaint against an officer but rather to point out to you where some action is needed, and I appreciate the fact that you do take action.

I would like to ask you a couple of questions, though, concerning this bill. Would you agree with the statement that was made by the president of the police officers' association that no matter what form this bill takes, being law-abiding public

employees, you would co-operate with the bill to the fullest extent and implement it in whatever form it was passed by the Legislature?

Chief Ackroyd: It would be my responsibility as a police officer to do everything I can to uphold the law that is written.

Mr. Philip: Would you agree that there is a completely different atmosphere, and indeed a completely different sort of person on the police force, than existed, say, in some of the more awkward situations such as Philadelphia?

Chief Ackroyd: You are asking me about the difference between a Philadelphia policeman and one of ours?

Mr. Philip: What I am saying is, would you agree that there would not be the kind of obstruction in any way by any of your officers as that which allegedly took place in the Philadelphia situation when they were faced with legislation that they didn't like passed by legislators?

Chief Ackroyd: I am not sure I can answer your question. I am not sure what the officers did in the Philadelphia situation. I apologize; I am not sure I can answer your question, Mr. Philip.

Mr. Philip: The point has been made that certainly the Metropolitan Toronto Police Force and indeed the chief of police are at a level of maturity far superior to that in some of the American cities where there have been problems in implementing citizens' review on complaints procedures.

Chief Ackroyd: If you are alluding to whether the men will co-operate, say, hypothetically to some type of an independent review--is that really what you are asking?

Mr. Philip: If that were the pleasure of the Legislature.

Chief Ackroyd: If that were the case, I think what they would do in all probability is look for some direction from the head of the police association rather than from the chief of police. If you talk to some of them, they indicate: "Why are we being treated as second-class citizens? We are we treated differently from other people? Have we not got the right to counsel when we are being questioned?"

I think it would be how responsible the head of the police association--we have heard some suggestions by people that it should be a dual investigation. I think if a police officer had two people from the public complaints commissioner and two people from Superintendent Dickson's staff, four of them coming to question, it would be wrong. I think that would ruin the investigation. There wouldn't be any review.

I wouldn't blame the officer, if he got to that point and he were treated in that manner, if he immediately indicated he wanted some type of counsel before he was questioned. You have the public complaints commissioner investigators there and our own complaint bureau investigators there.



Mr. Philip: I don't think anybody has suggested that they wanted to implement something like that.

Would you agree that in order for something like this to work it needs the co-operation of two sides, one the police and the other the citizens' groups that it is serving?

Chief Ackroyd: I am not sure I can speak for some of the citizens' groups. We have read some of the material in the press, but I think what is imperative is that the community at large must perceive that the model is going to work, and the police officers themselves have got to see that it is going to work and feel that it will work.

As I say, two chiefs of police and two heads of the police association, plus the other people I commented on, all indicated they are very prepared to try to make this model work. We think it is a very progressive step forward.

Mr. Philip: Have you had an opportunity to speak to any of the community groups, particularly visible minority groups, about the concerns they have been expressing?

Chief Ackroyd: Yes. But in talking to them I get an entirely different picture. For instance, I guess it was within the last five or six months that I was speaking at a lodge that was made up entirely of black people. At that time I was talking about police response to social change. I talked about some of my views on handling complaints. It was a gathering of over a hundred men with their wives. I was kind of a guest speaker but it was--

Mr. Philip: It wasn't dealing specifically with this bill.

Chief Ackroyd: Again, in talking to those people after my talk and informally with them after the dinner and socializing with them, most of their comments were positive that they were interested in having these investigations completed and they were willing and quite prepared to co-operate with some type of review mechanism.

Hon. Mr. McMurtry: Supplementary with respect to this question, Chief--

Mr. Philip: May I ask one supplementary first?

Mr. Vice-Chairman: You can't ask a supplementary of yourself.

Mr. Philip: Of course you can ask a supplementary to yourself. It is done in the House all the time.

Hon. Mr. McMurtry: With respect to this consultation, it was my understanding that for a long period of time before you became chief of police you were given special responsibilities by the former chief of police with respect to dealing with minority groups.

Chief Ackroyd: I have been dealing with minority groups for approximately the last 12 years, since 1969.

Hon. Mr. McMurtry: Were you given special responsibilities in that area?

Chief Ackroyd: It evolved prior to the former chief being appointed, in 1969. I was on Project '69 that was chaired by Dr. Gurstein involving alienated youth. At that time we were dealing primarily with the Rochdale situation and Yorkville.

Since that point I was promoted to deputy chief in 1970 in charge of field operations and have been involved with the whole evolution of dealing with community relations, community officers, race relation and ethnic squads and this type of revolution in the force. Over that 12-year period I have met with the minorities on many occasions.

MMr. Philip: I want to get into that in a minute. Before that, getting back to the original question and a supplementary to that question, as I understand it, your conversation with that particular group on that occasion was not dealing with Bill 68; they were expressing general appreciation for the general thrust in which you were going and perhaps making the police force more representative of minority groups and trying to be sensitive to them and some of your own attitudes towards it rather than the specifics of Bill 68.

Chief Ackroyd: Again, prior to Bill 68 ever being introduced, there were conversations around the whole issue of handling complaints because, as you know, they came out of Mr. Maloney's report. There were discussions around that. There were discussions following Mr. Pitman's report and following Cardinal Carter's comments.

I have indicated many times in communications with the minorities that my view is that we would support some type of review of these complaints so that they would perceive that there was an independent review and somebody to check, but I never felt that authority should be taken away from the chief.

I know some of them feel very strongly that the only thing that will work is a completely independent investigation. So you point out to them that hasn't worked any place else. I wouldn't want to see it tried in Metropolitan Toronto at this particular time. I feel if that model were brought in here at this time, in all probability it could do more harm than good to minorities in this community. That is one of the things that would really concern me. I have said that publicly many times.

Mr. Philip: Would you not agree that while this "has never worked anywhere else" it really has not been tried adequately elsewhere other than in Philadelphia, which has a unique situation? Would you not agree that studies into those models where the police investigate themselves have similarly not worked?

Also, would you not agree that the studies coming out of

Great Britain now indicate that that system, in the light of the recent poverty riots and so forth, is not working and that it should go towards a more independent kind of investigation system?

Chief Ackroyd: I guess what one must do is when you hire such people as Arthur Maloney, and now Mr. Linden having been appointed, people who do travel--I think Mr. Maloney went to some 20 different countries, studying the handling of police complaints--the impression I form is that if you hire someone of that calibre and he goes to 20 different countries and comes back and tells you, and then someone goes ahead and starts to review it six years later and comes up with the same conclusions, I think I would lean more towards the people who are doing the research and studying it than people who are reacting to a bill.

Mr. Philip: But you would agree that there are other studies done by the various civil liberties associations who have come to other conclusions?

Chief Ackroyd: I have not read the research done by civil libertarians.

Mr. Philip: In fact, the more recent Chicago studies indicate that if it errs, it errs in not going far enough rather than going too far.

3 p.m.

Chief Ackroyd: I understand, and I did not go down. I know Mr. Linden went down--I think Mr. Godfrey also went down--and looked at the Chicago model; that is certainly not what was portrayed to the public here in Metropolitan Toronto through the media.

Mr. Philip: I realize that you are a very busy person and perhaps you have not had an opportunity to read the Hansard. Indeed, some of us are only getting the instant Hansards now, the presentations before this committee. Does it not seem significant to you that not one community group that has come before us is in favour of the bill in its present form? Does that not trouble you?

Does it not seem significant that every visible minority group that has come before us has stated that, if the bill is implemented in its present form, they very much feel that their people will not make use of the processes that the bill is opening up? Would that not trouble you?

Chief Ackroyd: I guess the problem I have had, and I cannot say whether this is in effect what is happening here, is that I recall at one of the demonstrations one of the people from one of the groups was speaking, and he said he had prepared his speech three times but it did not satisfy certain people who were organizing the demonstration and they had rewritten it.

It was amusing to me; he wondered if I would glance at it to see if he was putting himself in a position of being liable in any way. I thought it rather strange that one of the speakers at an antipolice demonstration wanted me to look at the presentation



somebody else was writing for him. But I looked at it and did not think there was anything there that would embarrass him.

What I guess I am concerned about is that there is a certain amount of getting together of certain groups here, and they are going to come in here with a position. I do not know that; maybe that sounds like a very suspicious nature of a policeman like me. I do not get the feeling when I am talking to the average person out in the minority community that I get when I am talking to certain leaders and certain groups.

Mr. Philip: With the exception of perhaps one or two people, I have not felt that the groups that have come before us have been antipolice. As a matter of fact, on the contrary, the general theme that has come through many of them is that they feel that the police force in Metropolitan Toronto is so superior to many other jurisdictions that it is at that level of maturity where a more progressive form of investigation system could be implemented. I see that as being pro-police or certainly complimentary of you and your administration rather than against you and your administration.

I have not attended any antipolice demonstrations, if there are such things; so I do not know what people are saying. All I have to go on is the briefs that are coming before us, and certainly they are far from being antipolice. They are very supportive in a constructive way.

Many of them are saying that this police force at this point of time has reached the level of maturity where we can try something that is perhaps more respected and more trusted in the community, because we think they would be able to cope with it, whereas Philadelphia or some other city like that would not be able to. I do not expect you to comment on that unless you want to.

Chief Ackroyd: I think I would like to comment on it. I think really what some of them are concerned about is, if this model works, the things they have been saying are going to go for nothing in a sense. In other words, if this model is put in a position and nobody goes into the public complaints commissioner, evidently it is just because they do not trust him either. I find that rather strange.

I think that this, as I have indicated, should be given a fair trial. Let us have people go. Let us see what the public complaints commissioner and his independent investigators ferret out. Let us find out what we are doing that is wrong. And if you find out we are doing something wrong, then I think you should deal with us. I think you have a model now that is going to be able to go in and take a look. And these people have tremendous authority; they can go in and seize records, and they can seize the statements from the officers.

I have heard some comments here that it cannot be used against police officers in a discipline trial. I think the reason for that is we have never done that. If we get a complaint against an officer, we go and we conduct the investigation. If he makes a statement, we do not make him, in a sense, use his own statement

against him at a trial. It does not mean we will not charge him. But we have never used his statement, because if we did that then police officers would not make statements. If we charge him as a result of an investigation, we use the witnesses, but we do not use his confession. I think that is fair to the officer. Many of these things which have been going on as past practices within the force and within the Maloney bill of rights are there out of fairness to the officer handling these complaints.

Mr. Philip: I want to question you on a different tack--about something that was raised yesterday. I found your comments to be quite constructive and, indeed, showing considerable restraint and probably a good degree of maturity on this point. In response to this rights group that was formed, consisting of the Council of Chinese Equality, the National Association of Canadians of Origins in India, National Black Coalition, the Jamaican-Canadian Society and various religious groups, you are quoted as saying, as is Paul Walter of the Metropolitan Toronto Police Association, that you promised to co-operate with any group who was acting in a facilitator role to bring complaints forward. You were talking about this group in particular. I gather you do not see that group as a vigilante group. Would that be a fair statement?

Chief Ackroyd: That depends on how they form and what they do. I have not talked to them personally about what their intentions are. I read in the paper one day they are only intent on monitoring things in the court. If a citizen came to them and had a complaint, it is imperative that they somehow insert it into the present system or in the new system that comes out of Bill 68. To not assist the citizen with the complaint would be wrong.

As far as being opposed to it, 10 or 11 years ago we were holding meetings in 14 divisions with the black community. At that time, one of the things we heard was that people in the black community were reluctant to go to a police station or the police complaint bureau. This was prior to its moving to Yonge Street. As an experiment, just in a division, we set up three members of the black community and three police officers working in the station to act as a catalyst, to take the complaint and then, on their behalf, take it to the complaint bureau. In six months, that group of three members of the black community and three members of the force there, including the community officers, were able to get two complaints.

Over a 10- or 11-year period of dealing with the minorities, we hear this same hue and cry. We heard it 11 or 12 years ago and we hear it today. You set up the mechanics of trying to get these people, if they do not want to come forward, to come forward through some outside body like that. We tried it. I would only hope, if you are referring to CIRPA, is that if they get complaints against police officers they bring them to us.

Mr. Philip: I must say that I found your statements in the press were much more constructive and certainly much more tolerant and responsible than certain statements that have been made by a couple of other people who should know better. But I leave it at that.



Chief Ackroyd: I might point out that I had a recent experience within the last six months with a complaint that was not brought to me through any official channel; it was handed to me at a budget meeting. We assigned people to investigate it and for seven months asked the co-operation of this group of citizens to give us whatever evidence they had, to give us names of witnesses, and we did not get one bit of co-operation.

Mr. Philip: That was not CIRPA, was it?

Chief Ackroyd: No. CIRPA did not exist at that time.

Mr. Philip: That is a new organization. You mentioned earlier, and indeed some reference is made elsewhere, to the fact that you tried to respond to the needs of new Canadians and minority groups by recruiting people on to your police force who have different cultural experiences and may speak different languages. I am wondering if you can tell me how many people since you have become the chief of police have been hired into those posts and what is the recruitment procedure.

Chief Ackroyd: I had the numbers on me the other day. I am not sure I can reflect them accurately. I could give you a ballpark figure that we now have somewhere in the vicinity of 150 to 200 people from the visible minorities. I am going from memory. If this committee would like that, we have to do that manually. We have to go in every station and find out because we do not keep those kinds of records.

3:10 p.m.

Let me deal with your other point regarding our recruiting procedure. I guess I could talk for half an hour, but let me see if I can give you a quick overview. We had two outside groups, as you know, that came in and looked at our recruiting and also our training process. Dr. Gerstein has also had a look at it from a provincial standpoint, so there have been about three studies.

The Pitman report made 18 recommendations. Seventeen of them were immediately implemented. The 18th recommended that we abandon height and weight restrictions. We hired Mr. John Clement. Then, after a study following that, we hired outside consultants, Ekland and Jonnson. From that we have gone to a weighted point system in our recruiting, where certain points for certain things like height and weight have been abandoned. There are points for education, interview and a variety of things, a very detailed thing which leads up to 1,000 points.

Since that report we have hired a full-time recruiting officer. We have prepared a slide presentation in which we tried to depict the many visible minorities in the force involving a variety of police work. We take that out and go into the schools and to minority meetings, approach the community and make every effort possible. We also advertise in the various ethnic newspapers looking for minority people who could represent the minorities on the force.



Mr. Philip: I think that is a constructive procedure and a lot of credit goes to you; it was developed under your administration. But let me share with you a concern that I have, prefacing it by the fact that I cannot pass judgement on an individual case. It is certainly not my role as politician in any way to influence whom you hire or whom you do not hire. I think it would be destructive, and where that is being done it has corrupted the system.

Mr. Laughren: Such as liquor stores.

Mr. Philip: Such as liquor stores.

I have a particular case of a gentleman who has been on the police auxiliary for many years. He speaks three languages and has applied several times to get into the police force. What he receives now--this is dated September 22--is a form letter. That form letter reads, and I will quote:

"Dear Sir,"--it is not even Dear Sam or Dear Luigi or whatever his name is--sir is typed in because it is a form printed letter--"Further to your application for employment with the Metropolitan Toronto police, I am directed by the chief of police to regretfully advise that you have not been a successful candidate. The interest you have shown in the Metropolitan Toronto police is appreciated. I wish you every success in whatever career you now choose to pursue."

At least Mr. Kerr, who has his name printed, has had the kindness to sign this so at least it is a personal signature but it is a pretty cold form letter. Here you have somebody who is devoting a lot of time to serving the police force for nothing, and he gets a form letter. The form letter neither tells him whether it is worth while applying again or whether there are certain things he can do to upgrade his skills or upgrade himself so that he stands a chance in the future. It is a blank form letter. That kind of thing, I suggest to you, is bad public relations. This is so not only in the ethnic communities or the new Canadian communities but in any community if you are trying to influence the public from which you are trying to recruit these people.

Maybe you can advise me. Should this man write to Mr. Kerr or ask for a meeting with him and ask him to go over his application and advise him whether it is worth while applying again? A form letter really does not do very much.

The Vice-Chairman: The chief can answer this, but I am failing to see how this line of questioning relates to the bill. Maybe you can give us some direction here. We seem to be rambling a bit off the subject matter of the bill. Could you bring us back to the subject at hand?

Mr. Philip: You are probably right, but I thought it was generally related to the fact that the chief of police had described how he had taken a number of steps towards making the police more responsive to new Canadian communities. I thought since he had brought it up and since it was in order for him to bring it up, it would be in order for me to point out this one example because it does relate overall to--

The Vice-Chairman: I am giving you that latitude. Can we get back on track now?

Mr. Philip: Will you also give the chief the latitude of answering my question?

The Vice-Chairman: He did mention the number of those in the visible minority who had been recruited.

Mr. Philip: If we could have a one-minute answer from the chief?

The Vice-Chairman: He can respond to your question and then let's get back to the bill

Chief Ackroyd: I would prefer to deal with your individual request personally. I am on vacation right now. I'll even give you my home phone number when this is over. If you will call, I will check into it and give you a personal answer if I possibly can on that individual. What I would like you to respect is that sometimes we are not in a position to give out the reason. I share your view that maybe a form letter does appear cold, but let me outline the problem there. We hire about 350 people a year between police and civilians. We have to interview a little over 100 to get 10 so we have about a 90 per cent rejection rate. We are rejecting roughly 3,000 people a year; so I guess in that kind of bureaucratic structure maybe it does seem a little cold and insensitive.

I can assure you though that if this man was an auxiliary police officer, I would guess right now--I do not know--it had nothing to do with his education because we do do that. The problem area we run into about giving a people a reason for rejecting them usually stems from either their medical or their psychological examinations.

When doctors examine them or the psychologist gives us an opinion that is shared by our interviewers, we are dealing in such an area that to open it up and start saying, "Our doctor does not think this or the psychologist thinks that," we find it is much better--and I think most companies do this--to just refer to a form letter of rejection. I think that is the reason for it.

The Vice-Chairman: Mr. Philip, just before we get back to the bill, I want to point out that I am going to allow you until 3:30 to continue your questioning. I have two other members who have indicated they wish to ask questions--Mr. MacQuarrie and Mr. Elston. If their time does not take up their half-hour allotment, then you can come back after.

Mr. Philip: Since there are other people on it and since my colleagues, Mr. Laughren and Mr. Breithaupt, have asked a number of the questions I wanted to deal with, I will give the floor to someone else. Thank you very much for your co-operation and your help in the past.

Mr. MacQuarrie: I'll be very brief, Mr. Chairman. As has already been mentioned, a number of briefs have indicated there is a group, which has never really been quantified, of people who might possibly have complaints they would like to lay against the police department. One of the deterrents that has been referred to in the briefs has been that they fear charges or the threats of charges of public mischief. Along that line, I would like to ask how many charges of public mischief were laid by the police department against complainants in the past year?

Chief Ackroyd: There have been three this year so far. In 1979 there were six and in 1980 there were 11. It averaged about seven a year over the last five years.

Mr. MacQuarrie: What were the results of those prosecutions?

Chief Ackroyd: A variety. Some of them have been dealt with in plea bargaining or they have pleaded guilty to one charge and the public mischief charge has been withdrawn. Others have been convicted and some of them have been dismissed. There has been a variety.

Mr. MacQuarrie: So out of the large number of complaints that are laid with the department against the conduct of individual officers, there are very few charges of public mischief?

Chief Ackroyd: Yes, and if you do not mind, sir, I would like to comment on that.

Mr. MacQuarrie: If you would.

Chief Ackroyd: I have been involved in one of them personally. A person I dealt with at the Urban Alliance on Race Relations asked me if I would see him there. This man laid a complaint. It was completely investigated and when we sat down to review it--in fact, Mr. Wilson Head sat in when we reviewed it--we went over all of the points he raised in his complaint. He pretty well at the end of it said, "So I lied to you. What are you going to do about it?" This particular fellow has had five convictions of public mischief. He had just come out of jail this year after doing two months for public mischief.

3:20 p.m.

In fairness to the officers, no one should be entitled to come forward and intentionally lie and intentionally fabricate a story, give it to some investigators and feel that is perfectly okay. That is a criminal offence. If you make a false statement to cause an investigation, knowing it is false, and you do it with the intent to mislead justice, it is a criminal offence. I think this is a bit of a sham they raise whenever they refer to this business of threatening to lay public mischief or laying public mischief.

There was a thing recently in the paper where a young woman had accused a man of raping her in a particular hotel. Two days later, she admitted she had fabricated the story because the man



didn't completely pay his bill. We charged her with public mischief, but still she did tremendous damage to that particular citizen. That could affect any number of people in this community. So I think it is a bit of a red herring when they keep referring to public mischief because, in order to convict someone of public mischief, you would have to prove they intentionally lied and they did it with the intent to mislead the administration of justice. I think that is a key point.

Mr. Kennedy: You cite the number of cases where charges of public mischief are laid. Do those all relate to police misconduct or are there other reasons? You have given one example just now that certainly wasn't anything to do with police misconduct.

Chief Ackroyd: We lay charges of public mischief against citizens in criminal investigations.

Mr. Kennedy: I think the committee was thinking in terms--I don't know what the committee thinks--of public mischief charges being laid following allegations of police misconduct.

Chief Ackroyd: There have been some of those. As I say, they average six or seven a year, but there are many others that have nothing to do with a complaint against a police officer.

Mr. Kennedy: The ones you cited, the numbers in 1979 and 1980 and so on, what do they relate to?

Chief Ackroyd: These deal with complaints against police officers.

Mr. Kennedy: For misconduct?

Chief Ackroyd: Some of them would be. For instance, in 1981, one has been for misconduct and two for assault. One got 30 days in jail. The second one was dealt with by plea bargaining and he pleaded guilty on one charge and it was withdrawn. In the third one this year, the court date is set for October 27, 1981, for trial. These were the three cases this year of public mischief laid as a result of dealing with the complaint bureau.

Mr. Kennedy: And as a result of alleged police misconduct, to use that all-encompassing term.

Chief Ackroyd: Yes.

Mr. MacQuarrie: I take it, in your opinion, there is no substance whatever to the prospect of public mischief charges being laid against people who lay valid complaints against peace officers?

Chief Ackroyd: No. As I say, unless somebody comes forward intending to lie, intending to fabricate a story and intending to mislead the administration of justice, we would not lay the charge.

Mr. Elston: Just picking up on that particular part of it, I can appreciate the statistics there of the number of charges. I think really what has been indicated is that in some circumstances individuals may be faced with the suggestion by an officer that if anything further is done a charge will be laid. Of course, that is one thing I presume we have no way of finding out about. It is being used as a lever, if you would. I don't know whether there is anything you can say on that.

Chief Ackroyd: I would like to ask Superintendent Dickson. I think if a complaint was laid and the officer was laying a charge, you would be aware of it, wouldn't you?

Superintendent Dickson: Yes, I would. One thing I just picked out a figure on is that so far this year we have laid three public mischief charges. We have also had 176 unfounded complaints, that is, where the conduct complained of didn't happen and we can prove it didn't happen. We only laid three charges out of those because they have to be serious and the crown attorney has to be satisfied it is in the public interest to lay the charge.

Mr. Elston: I was going to get to those statistics, and maybe right now would be a good time to do so. You indicated 743 charges laid over a five-year period. These are Police Act charges?

Chief Ackroyd: They are under the Police Act and they appear before our (inaudible).

Mr. Elston: Are these all laid as a result of police complaints? These are the total number of charges?

Chief Ackroyd: That is the total disciplinary problem. I have gone down to the records of the trial officer and looked at the informations that are sworn. Some of these would have come from the complaint bureau; some the sergeant has made; and some of them are triggered by the officer not appearing in court. They may come in from any level.

Mr. Elston: These are the total number of charges then?

Chief Ackroyd: Total charges.

Mr. Elston: Then the 35 criminal charges you talked about were related to the complaints procedure?

Chief Ackroyd: They were related to complaints, yes, sir.

Mr. Elston: Are we dealing with in this situation roughly 10 per cent of the complaints that are not informally resolved? Is that what this figure of 518 complaints for 1981 is made up of?

Chief Ackroyd: The 500 and 700 figures are looking at five years of disciplinary charges that have been laid.

Mr. Elston: No, I am referring to the 518 complaints that Superintendent Dickson had indicated. Are those representative of the 10 per cent of complaints that were not informally resolved?

Chief Ackroyd: Yes, that would be the total, including those that were not informally resolved.

Mr. Elston: That is the total of everything that has come to your attention. Can you tell us about some of the complaints that were informally resolved. What type of incidents compose that 90 per cent? Do you review that?

Superintendent Dickson: I think it would be a cross-section. I don't have exact figures on that.

Mr. Elston: These are the circumstances where the individual and the police officer may end up shaking hands.

Chief Ackroyd: The superintendent would have the letter here. When we say that they are informally resolved, it may be by an apology; it may be by explaining both sides of it. Let me give you an example, the one that came to the police commission. He was not satisfied with the complaint bureau. The officer found himself in a civil dispute. He found himself in an argument between two people sharing a warehouse, in a dispute over the amount of space and how they were using it. It might have been wise in that particular case if he had left because he could not please either party.

Superintendent Dickson: He got trapped.

Chief Ackroyd: He got himself involved in a thing almost of a civil nature. As I say, most of them are of a minor nature. When the complainant signs the form he is satisfied we have done everything we can to try to resolve that complaint and we have told him what we have done. Then he signs the form. Is that the correct way--

Superintendent Dickson: Right.

Chief Ackroyd: Do you want me to read that form so you know what is in it? It says: "I have been interviewed this date by"--the name is put in--"of the Metropolitan Toronto Police Citizens' Complaint Bureau regarding my complaint. The results have been fully explained to me and I am satisfied with the investigation conducted on my behalf by the Citizens' Complaint Bureau."

Mr. Elston: Do you have problems with people signing that form at the end of your investigation?

Superintendent Dickson: No. The vast majority sign it.

Mr. Elston: If they do not sign, then I presume you would continue with your investigation or you would say to the person, "Listen, we have information that shows you ought not to go further with this." How do you deal with it if a person does not sign it?

Superintendent Dickson: You come to a conclusion and the conclusion may be what the complainant does not like. The



conclusion may well be that we have evidence that what he complained about did not happen, so the complainant is not happy with that finding. In that case, my files are then forwarded to the executive officer who again reviews my investigation. He agrees with the investigation and writes a letter to the complainant saying the complaint is unfounded.

Mr. Elston: How then is that sort of complaint tabulated? What column of result does that go into? Is that an informal resolution? Does it go unresolved? How is it tabulated in your statistics?

Superintendent Dickson: It is resolved. The one I just spoke about as an example would go in the statistics as an unfounded complaint.

Mr. Kennedy: How many charges do the Metropolitan police lay in a year?

Chief Ackroyd: Total charges?

Mr. Kennedy: Do you have that statistic, the number of charges for offences?

Chief Ackroyd: That's the one I read out. Approximately 100 police officers, involving approximately 150 charges, in looking at a five-year period, are charged under the discipline code. Something Mr. Johnson just drew to my attention is that you must remember that does not mean that is the total picture from a disciplinary standpoint. For instance, if an officer misses court, the first time you do not charge him. The staff inspector of a division may assess him four hours off. So, again, even with internal discipline problems, getting away from complaints, many of those are resolved informally at the divisional level.

3:30 p.m.

Mr. Kennedy: Maybe I didn't make my question clear. How many citizens are charged in a year? How many charges are laid against citizens?

Chief Ackroyd: Totally, in Metropolitan Toronto, including provincial statutes, we arrest somewhere between 90,000 and 100,000 people a year. In addition to that, there would be about 600,000-odd people charged under the Highway Traffic Act, and there would be in the neighbourhood of two million parking tickets issued. We answer about 2.1 million radio details and, of that 2.1 millions, we send an police officer to about 1.2 million homes in response to calls for service.

Mr. Elston: If I could continue with a different line of questions, what is your perception right now of the role given to the public complaints commissioner by this legislation?

Chief Ackroyd: My perception of this, as I indicated, is I think it is a progressive step forward. It sets the mechanics into position for any complainant not satisfied with an investigation conducted by our complaint bureau to have it

completely reviewed by an outside group with their own investigators. It then gives them the authority to proceed with a single person conducting a charge against a police officer. In a serious case, it can also set up a three-man tribunal and proceed with disciplinary action with three people sitting. It gives them authority under that to hand out the same penalties as the chief of police can under the Police Act in a disciplinary procedure.

I think it sets up a lot of other mechanisms that may work very informally. For instance, it provides me with the authority to hand a complaint to the public complaints commissioner, if I wish to. I may have one that comes into our complaint bureau and Superintendent Dickson may come to me and we may feel in this one it possibly would be in the best interest if we turned it over to the public complaints commissioner. It also allows the public complaints commissioner, upon receiving the interim report, to get in touch with us and give us some idea of the things he feels we haven't done that we should do, some further avenues we should explore. I think there is tremendous ability to function very co-operatively with the public complaints commissioner to try to resolve these complaints even further.

Mr. Elston: Do you see the public complaints commissioner as acting for the complainant, or do you see him in an independent role, independent of the complainant and independent of the--

Chief Ackroyd: I see him in a sense as independent, but he is obviously acting for the complainant because he is reviewing his complaint. He is going back and reviewing that investigation and assuring himself that it has been properly conducted and that nothing has been left undone.

Mr. Elston: Your perception of the public complaints commissioner is that he is acting on behalf of the complainant, rather than being independent of either the complainant or the (inaudible).

Chief Ackroyd: I think it is a mixture of both but, as I say, his primary responsibility would be to review, check for the complainant and make sure the complaint he made has been properly investigated and the investigation has been done properly.

Mr. Elston: I have a question in relation to your role in the public complaints commissioner's discretionary powers dealt with under section 14(4). If we are getting into a situation where he is reviewing and monitoring the situations of an investigation and decides he would like to get into the investigation early, he can make that decision but has to give you notice and then you have the right to have that matter refused judicially. Is it really necessary that you have the power to take him to court, so to speak?

Chief Ackroyd: I feel it's a safeguard. I'm certainly the one who raised that issue when I met with Dr. Smith, and I think you and I discussed this. My concern when this was first raised by the head of the Liberal Party was that I think there was

some feeling that, under certain circumstances, the public complaints commissioner could go in earlier. I don't think these words were used, but what they alluded to was if we were not conducting the investigation properly or if we were unnecessarily delaying it. Some of the accusations were that some of these complaints were dragged out for a year. That was not a matter that was the police's fault. I can discuss the reasons if you like. That has been one of the issues with the minorities--the length of time involved in some of these complaints.

I felt that you are then accusing the police chief of either improperly conducting the investigation or unnecessarily delaying it. If you had an irresponsible public complaints commissioner, he could move in at the end of 48 hours on every complaint and say, "You are not conducting it properly." What recourse would the chief of police have?

Mr. Elston: You are looking, more or less, at the public complaints commissioner as an affront to your position as a chief of police?

Chief Ackroyd: That is why the discussion revolved around that. For instance, I think if a police chief is improperly conducting it or is unduly delaying, he should be allowed to move in. But can you then accuse the police chief of doing that and give him no recourse?

Mr. Elston: What you are saying is that the police chief should be beyond reproach.

Chief Ackroyd: I am not saying that at all. I am just saying--

Mr. Elston: But you are saying you should have the judicial right to take this public complaints commissioner, who under the current situation is supposed to be monitoring independently--his discretion should be far and wide as long as it does not step on the toes of the chief of police? I do not mean to say this unkindly to you in your personal capacity, but that is somewhat what it is beginning to sound like.

Chief Ackroyd: Let me try to put into perspective. Say they made you, Mr. Elston, the public complaints commissioner and you personally decided, "I am not going to let Chief Ackroyd conduct any investigation. On all 800 I am going to get the copy of the complaint in the file and the next day I will notify you I am taking over." You could then completely get around what the intent of this legislation is, in my opinion. If you sincerely came forward and pointed out to me that you felt there was something wrong, it was unduly delayed or improperly conducted, then I would have absolutely no objection to any PCC coming in. If he is going to abuse that authority, then I think there should be some protection built in, whether it is by this measure--

Mr. Elston: Do you have any suggestion at this point that his authority will be abused?



Chief Ackroyd: This bill may be around for the next 100 years, or the next 50 years. It is a pilot project for three years. We do not know if it will be successful. It may be all over Ontario in five years. How do we know? I think it is very important that we start off properly. My only concern is that if you give the PCC the authority to walk in at any time and all he has to do is say, "You are not conducting it properly; I am taking it over," and the chief cannot do anything about it, then it would very much depend on who that person was and how he used this legislation.

Mr. Elston: Another area I would like to look at now is investigation. One of the comments we have had concerning independent investigation at any stage is that the investigation will not be as thorough as it is now with the police doing it themselves. Do you have any feelings on that?

Chief Ackroyd: If certain people make certain accusations about something that happened on the street, if there are independent witnesses--I have already talked about that--and the witnesses are available, they are going to be able to interview people. In the case of all the documents we have taken, for instance, if a person comes to us and complains about force, we immediately have them photographed. All of that is going to be available. It is there. Our complaint bureau would have all that in the file, and they can come in and take all that over. Then they can go out to the police stations and seize whatever they like there.

Mr. Elston: So you have no difficulty with the quality of investigation that might be received.

Chief Ackroyd: I guess one could make reference to the Justice Morand inquiry where people went back two or three years and brought forward witnesses. If you recall in one case, in an investigation where we had not laid criminal charges, they dug up a witness we had never heard of. They found a witness in that case. The man came forward as a result of public advertising and brought forth evidence that we did not have.

Mr. Elston: In terms of your own view, investigation done independently by an outside force is not a criterion in turning that down. It is just not an ingredient in turning down the idea of an independent review or investigation proceeding. I will make myself a little clearer. You are not concerned about the quality of investigation?

3:40 p.m.

Chief Ackroyd: I am not concerned that something is going to be hidden. I think what you were alluding to is that really--for instance, there is a report in there within 30 days. I assume if the complainant is not satisfied, he knows the PCC has been notified and the maximum is 30 days and he is going to be letting the public complaints commissioner know he is not satisfied. I think that is a fairly short period of time that the public complaints commissioner can start to review it.

Mr. Elston: In your opinion then, the police investigation and the civilian investigation which will be conducted after the 30-day period in some cases perhaps will be--

Chief Ackroyd: It might be conducted after five days.

Mr. Elston: Or whatever, yes, at some point. In any event there will be no difference in quality, as far as you are concerned.

Chief Ackroyd: I guess the quality of it is determined by the investigators and their competence to investigate and interview witnesses.

Mr. Elston: Hypothetically though, if people are operating for the police investigation team and people of equal ability on the civilian investigation team, you should come up with an equally competent job of investigation?

Chief Ackroyd: I do not know any reason why they cannot conduct the review.

Mr. Elston: I will tell you why I ask the question. It has been alluded to here by some people that independent investigation done by civilians, or nonpolice people in any event, is not going to be as thorough as one conducted by police. It is in that frame of mind that I want to get your understanding of how the investigation--

Chief Ackroyd: I think the only answer to that would be determined by the calibre of the person doing the investigation and whom he is investigating. I would think someone with absolutely no experience or no training that was hired by the public complaints commissioner and he was, say, investigating a complaint against a very seasoned investigator with 20 years criminal investigation experience, he might have some difficulty. If he had experience and was well-trained and understood the art of investigating and taking statements and looking for evidence and preparing the type of material he would need to conduct an investigation of that type, I think many of the people who do this type of work following royal commissions or public inquiries have been former police officers or private investigating people who had been former police officers.

Mr. Elston: The police association, when they appeared before us, indicated they would be prepared to accept independent investigation of their members provided there were certain rights built into the program--I presume some of those which were built up in the Bill of Rights and the policeman's bill of rights, which you mentioned in your brief. So it would appear they are prepared to accept an independent--

Hon. Mr. McMurtry: I was here, Mr. Chairman, and that is not my recollection of what was said. The president made it very clear that as far as they were concerned it would not work. That was my recollection.

Mr. Philip: I think the record will show that he did indicate he would co-operate with any system.

Mr. Elston: But he was more concerned, Mr. Chairman, with the Bill of Rights approach which was alluded to here earlier by the chief than he was with who investigated. In fact, he made several comments about their opinion of internal review and civilian investigation.

I think really what this whole line of questioning is getting at is that this act and the process it is setting up is largely building public confidence in the system. I think there were several questions before which indicated a desire to show the system was working well or whether it was not working or statistics designed to show whether it is working well or is not working well. What we are really all coming down to is we are trying to make a system in which the public is confident that it is going to be working and which the police officers are confident is going to be working as well. In many respects I think the independence of the public complaints commissioner is one area where you have to make people feel they are actually going to be getting a fair overview of that.

It is in that light that I am asking you if you would be opposed to allowing the PCC, in fact, to designate whether or not he got in right from the start, independently of you, putting his own investigators on the project or leaving it to the police. I guess that is really the crux of one of the dilemmas I am finding myself in right now as to what you are feeling might be there.

Chief Ackroyd: I would be opposed to that ensconced in the legislation. I think I have already indicated the legislation provides that if I felt there was a case where I wanted him to be involved right from the beginning, I have that authority. On the other hand, if he called me and requested it, there is a possibility within the present legislation that I could agree to it. But I would be opposed to anybody putting into the bill something which said he had that authority to move in from day one.

Mr. Elston: What would happen if we have a police chief who is not as co-operative as you are? Would we not be going to the other side of that scale?

Chief Ackroyd: I think you are starting a new piece of legislation with the present chief of police and, unless I stop a truck tonight, we are going to have some time to deal with this and see how it works and set a pattern of how it is going to work.

The Vice-Chairman: Mr. Elston, could you speak into the mike. We are having some difficulty with picking you up here and hearing you at this end of the table. Thank you.

Mr. Elston: One of your concerns is that the PCC is not going to be a responsible individual and so you need a check on him. That is what you are saying, that he might not be a responsible individual.

Chief Ackroyd: You are going back to section 14(4) again. I think I discussed that with you and I will repeat what I have said. Say that you, Mr. Elston, were the PCC and you decided that as soon as we sent you a copy of the complaint you were going



to come in the next day and say, "I am taking over," and I say, "For what reason are you taking over, sir?" Then you say, "You are not conducting it properly." With 800 complaints a year, three times a day, you could be accusing me of improperly conducting investigations. I do not think it will happen that way, but I do not think anything should be built into the legislation that would allow it to happen.

Mr. Elston: So you are happy that the PCC should be tied down to a monitoring, more or less, by the police chief?

Chief Ackroyd: I think the fact that the bill allows him to step in as soon as he receives the interim report--I have a maximum of 30 days. You can rest assured it is not our intention to sit there waiting for every complaint for the full 30 days because there are 20 people tied up there investigating these complaints. As soon as we can get an interim report down to the public complaints commissioner, we are going to do it. I hope it will be fair to say some of them you will have in a week, some of them you will have within two weeks, some within three and some, of course, will have to come in under the deadline. Some of them we may not have finished. Many of them we will have finished within the 30 days and they may be completed within the 30 days.

Mr. Elston: I am interested in the question of discipline because that is tied to morale; manageability is more the case of the police force. The question of morale is going to be built around who implements the discipline. Is that fair to say? Does it really matter who investigates as long as there is a disciplinary proceeding taken by the chief?

Chief Ackroyd: I can only give you a perception of what I think the morale would be. The personnel are being made aware by the president of the police association at their meetings of how this model works. The president has assured them that he is going to co-operate with it. The men are aware of what is proposed here and aware that these interim reports are going over to the PCC within 30 days. There has been no kind of hue and cry from the rank and file. The former chief and myself and the members of the police commission and all the other people I have mentioned have supported this model. With that kind of support, the personnel seem to be ready to accept it and work within this model.

Mr. Elston: I guess that does not answer the question that I asked. This form is best in order to keep discipline is really what you have said. It seems to me that you are concerned that if any of your function as disciplinarian is removed you will lose control of the force.

3:50 p.m.

Chief Ackroyd: You should not divide the disciplinary role of the chief. He is responsible for running the police force. That is what you have hired him to do; that is what you are paying him to do. Part of that disciplinary procedure is to investigate complaints against his personnel to see that they are properly conducted.

Mr. Elston: So you do not see any separation between the investigative process and the actual implementation of the discipline itself; for instance, the laying of a charge or suspension or whatever?

Chief Ackroyd: That is an authority we have: to investigate a complaint. If we feel criminal charges should be laid, we lay them. If we feel disciplinary charges should be laid, we lay them as well. Sometimes we lay both.

Mr. Elston: You see no difference between the investigative process and actually implementing the discipline itself. In other words, you would not act on a report made by some other body, for instance. You would not feel confident.

Chief Ackroyd: I am not sure what you are saying. If I read in the paper a complaint that a citizen has made, I would call the complaint bureau and have them look into it.

Mr. Elston: What I am saying is something separate from that. If I, as an independent investigator, made a report to you that said I had found certain facts were substantiated, and you saw that, reviewed it and then you implemented a disciplinary proceeding, whether it was under the Police Act or whatever--

Chief Ackroyd: I am not sure I follow your question. Let me put it to you this way, if this is what you are alluding to: Say we conduct a preliminary investigation into a complaint. The report goes down to the public complaints commissioner. He sends some people out and he finds further evidence we did not discover; or some people come forward to him who would not come forward to us and, as a result, further evidence is obtained.

If he came back to me, we would take that further evidence and send it to our trial preparation officer. If there were sufficient evidence there to warrant a charge under the Police Act, we would lay it. If there were some suggestion of criminal action, we would go down and see the crown attorney and lay the criminal action.

Mr. Elston: Okay, I can understand your proceeding that way. But what happens if it was not to the complaints bureau that you sent your inquiry, but it came to me? Would you feel as comfortable acting on it after I had investigated further, for instance, as you would if somebody in your own staff had investigated it?

Chief Ackroyd: You mean, if the citizen went to you as the public complaints commissioner or you as a member?

Mr. Elston: No, as a citizen.

Chief Ackroyd: I have already indicated before this hearing that, if a citizen decides to go directly to Mr. Linden, I would hope his investigators would take a very detailed statement from him, as many particulars as they can, and turn it over to us as required under the bill. Then we would pick up the investigation and carry it out and get the report back to him.

Mr. Elston: I guess you still misunderstand me. I am putting myself in the position of a civilian investigator, making a report to you, instead of you having police investigators making a report to you.

Chief Ackroyd: You mean civilians on my own staff or civilians from the public complaints commissioner?

Mr. Elston: The public complaints commissioner.

Chief Ackroyd: Again, if he reviews it and his civilian people go out and conduct further investigation and get further evidence, I would assume the public complaints commissioner might get backing. Under the bill, he does not have to; he could go ahead and lay the charges.

Mr. Elston: But if they showed something was wrong, you probably would be pleased to act on that new information.

Chief Ackroyd: Certainly we would. But he has two areas he can take. He can take the additional evidence and conduct his own hearing, or he can bring it back to me and add to what we have and we can lay the charges. Both of those options are open under the bill.

Mr. Elston: You would feel comfortable with that after, presumably, you had reviewed the information as well?

Chief Ackroyd: I guess I would feel somewhat uncomfortable if our people had not done as thorough a job.

Mr. Elston: Other than that angle of it, though? As long as the investigation uncovered--

Chief Ackroyd: If they uncovered evidence that we were not aware of or if they were able to get certain witnesses that we did not know about, I would not feel uncomfortable about that. As I said, I might feel uncomfortable, I might feel embarrassed if our people did not conduct it properly in the first place.

The Vice-Chairman: Mr. Kennedy, you had a couple of questions.

Mr. Kennedy: If they have been asked, Mr. Chairman, just cut me off. What is the number of personnel involved in the current police complaints bureau?

Chief Ackroyd: I will get the person in charge to answer. Superintendent Dickson is in charge of the bureau. He has a staff of approximately 20 people, including civilian and police. He is housed in a building that is completely separated from any one of the other 35 buildings we function from. He is not in any police facility where another police operation goes on, and to some extent we have let him pick people whom he feels are competent investigators.

As part of our career development, we have assigned an inspector there as part of his career development, as an assistant. So he is aware of some of the problems citizens bring forward as complaints.



Having said that, maybe the superintendent will tell you how many people he has and what their ranks are.

Superintendent Dickson: At the present time there is myself, an inspector, 11 staff sergeants, five sergeants and three civilian clerks to do the typing. The investigators number 16.

Mr. Kennedy: Is one of these people a civilian lawyer, legal staff?

Chief Ackroyd: Not at the complaint bureau. We engage the Metro legal and, of course, at times use the crowns for advice, if it is of a criminal nature. Sometimes we use our Metro legal; we retain a number of lawyers from the Metro legal department to look at some of these cases.

Mr. Kennedy: That is Metro council legal?

Chief Ackroyd: Yes.

Mr. Kennedy: On your own payroll there are no solicitors as members of the police force?

Chief Ackroyd: No.

Mr. Kennedy: I see. Under the new bill, then, how do you see the makeup of the bureau?

Chief Ackroyd: I wouldn't see any change in the makeup of the bureau other than, I believe under the bill it gets a new name. I would see the changes being primarily in forms; I see a change coming in the literature given out to the public, but I don't at that time perceive any change in our staff. We are still charged with the responsibility of the initial investigation. Possibly we will have to submit reports.

The only change that could come about as far as staffing the bureau is concerned would be that there is a provision in there for me to delegate the review responsibility to someone other than the person who runs the bureau; so we may have some internal change. Superintendent Dickson stays in charge of the bureau; I may have to delegate someone else to review it and, with all of them having to be reviewed now, that may mean some slight change from an administrative standpoint, but not in the staffing, as far as the investigators are concerned.

Mr. Kennedy: Basically that is the same, but over here we are adding this new body, which is the public complaints commissioner.

The Vice-Chairman: Did you want to question the deputy?

Mr. Kennedy: I just wonder what you see as the makeup of the commissioner's office from the standpoint of personnel. How many bodies are we adding and what is involved in that?

Hon. Mr. McMurtry: I think it is a little premature to speculate as to what the demand will be. Obviously he will require investigators, but the plans at the present time are to develop the office and increase the personnel as the need arises. I understand space has been obtained in the same building as the Ombudsman, which is at Bloor and Avenue Road, Queen's Park Boulevard, which is very accessible. We looked for space that would be central and accessible to the citizenry.

Staff size will be determined as we go along. I believe a couple of investigators have been hired, but the size of the office again will await further developments.

Mr. Kennedy: Where does the funding come from for this, out of the police budget?

Hon. Mr. McMurtry: The agreement we entered into with the municipality of Metropolitan Toronto, given the fact that this is a pilot project, is to share the funding on a 50-50 basis.

4 p.m.

Mr. Kennedy: One other question: We have had a number of delegations come, and a number of those I have heard have said that people are hesitant to make complaints because they perhaps fear retaliation or they are shy or bashful and hesitant to complain. In the testimony of some of these delegations who came before the committee, they had reason to make the claim of misconduct, but they were hesitant to do so.

In your many years of experience, is there any common profile of the person who complains? What is your impression? Do you feel there is any validity to that? Perhaps this is impossible for you to answer. If a person doesn't come forward, how are you going to know? I realize this. This is what the delegations have said. I thought I would like to get your thoughts about that.

Chief Ackroyd: I would like to give you my views, but I would like you to hear Superintendent Dickson's views. He runs the bureau and is dealing with them on a day-to-day basis.

One of things we are dealing with usually is that people who have been arrested feel they want to complain, maybe about the amount of force that is used or maybe about the charge that has been laid, or the fact they were arrested, and they use the complaint bureau as a vehicle, going there because they are charged and before the courts. I have seen quite a bit of that.

The other area is language. A policeman using either abusive or insulting language seems to be something I hear about fairly regularly in complaints.

Those would be two of the areas, but I think the superintendent would be better qualified to answer because he sees these forms every day and knows the complaints he is dealing with on a day-to-day basis.

Superintendent Dickson: The spectrum is pretty well covered as far as complaints are concerned, but the difference is the type of complaint. It is very rare that you find the average citizen who is complaining about an officer's language or his attitude, or ever complaining about an assault, for example, because they don't run into a situation where that happens. Most of your assault complaints come from arrested persons.

Mr. Kennedy: Do you think there are incidents where they won't come forward because they feel they might be intimidated with threats or retaliation. This is what some of these witnesses have said before us.

Chief Ackroyd: I cannot recall ever receiving a letter where anybody has laid a complaint about anything that has happened to them, whether they have been threatened or intimidated. I have heard people say this.

You talked about the reluctance of the people to come forward. I mentioned to you that some 11 years ago we tried an experiment with the black community, having them name three citizens to work with police officers and saying, "If you don't feel like going into a police station or a complaint bureau, go to anyone in this group and he will bring your complaint forward for you." I don't think we got two in six months.

Mr. Kennedy: Is that so?

Superintendent Dickson: For this year, from January 1 to the end of August, we had 528 complaints. Of those, 428 were made in person either at the complaint bureau or at a police station. These people walked into the police station and walked into the complaint bureau to complain. I don't think they are bashful at making complaints.

Mr. Kennedy: I know some people who have been charged are pretty hot about it right at the time. That is when I get a call from somebody; they say, "They did thus and so." Usually they come right to my office from having been handed a ticket for a traffic violation or something like that. But it doesn't go any further than that. In the cold light of the next day, maybe it is not so bad.

I am wondering if these emotional upsets occur especially to a person who hasn't much experience in connections with the police and who suddenly finds himself confronted with this situation. The two or three cases I can think of did involve just what you said, Chief; it was a language problem, and they didn't quite understand what was going on. Suddenly, their whole lifestyle is upset, at least for an hour or two. Then over a period it seems to become less. At least it fades away as having been anything but proper conduct by police.

Chief Ackroyd: As I said, concerning the one officer I mentioned, I was disturbed to find that in two and a half years I had had six complaints about him using insulting language with people, two of them within a two-week period. I was very pleased when he resigned from the police force.



Mr. Kennedy: There was some validity to those complaints then.

Chief Ackroyd: Yes.

Mr. Kennedy: This experiment you had with the three blacks and police working together just didn't generate anything?

Chief Ackroyd: I think it generated approximately two complaints in about a six-month period where they could go through their own peers.

Mr. Kennedy: I think that helps to clarify that.

Mr. Wrye: Chief Ackroyd, I apologize for being delayed but what the weatherman did in Toronto in terms of the fog, he has done most of the day in Ottawa. So I had seven less than delightful hours at the Ottawa airport today.

I apologize to the other committee members and to you if I am going over a little bit of old ground, but there is one area that I wanted to go over with you because it is an area that is really the key to the bill as far as I am concerned. It is an area that troubles me.

I want to share with you the impression that I have. On the one hand we have yourself and the members of the association, and perhaps the Solicitor General, who have suggested that if we were having independent investigations, no matter how highly trained the investigators were--for example, if the investigators were all former police officers--that would lead to a problem of discipline within the police force and a number of other attendant problems.

On the other hand, we have had civilian group after civilian group come in here and say--and it is a bit of a cliché--that justice must not only be done but be seen to be done; that you cannot continue the present system with respect to the superintendent and those who are involved in the complaints bureau. You cannot continue that system and have justice be perceived to be done within the community, no matter whether it is or not. Indeed, a police officer who may be absolutely innocent of a complaint may still be perceived by somebody in the community to be guilty simply because it was the police who investigated themselves.

So what we are looking for, and what we have been searching for, is perhaps some middle ground. Can you suggest to us any middle ground that you can see that would allow both sides--

Hon. Mr. McMurtry: Other than the middle ground that is this legislation.

Mr. Wrye: Do you understand the problem? I am not sure, Mr. Solicitor General, with respect, that it is a middle ground in terms of the investigation process.

I would like you to respond in a sense to what the community people are saying, what these civilian groups are saying. We have

had brief after brief, so there has to be some basis to it, I would suggest to you with respect. How do you respond to what they have been saying?

Chief Ackroyd: I think there are a number of points. As you say, I have been over this when you were not here. I think we alluded to this in our brief.

My first statement would be the fact that you have had a number of people review this up to now. I would go back to Arthur Maloney and all of his recommendations and research; and all the other people, including Mr. Justice Morand, Mr. Pitman and Cardinal Carter, who have been involved in looking at this police force over the last six or seven years have indicated that they are supportive of the Arthur Maloney model.

He comes out very strongly in his submissions that after visiting 20 different cities or 20 countries--I forget, because that is going back five or six years, but he does list all the places he went, such as New Zealand and Australia--saying that model does not work. Of course, I am very reluctant to see anyone put in a position that does not work.

The latest thing--not to review all of the history, because it is in our brief--is that Mr. Linden, who was formerly with the civil liberties association, went out and conducted an investigation. He went and looked at a number of places. All of the people who are doing research in this, all of the people who are doing an indepth study of it, are recommending something similar or identical to this latest bill, Bill 68.

As we have indicated in our brief, as a police force we think this is the next step and the best step to take: to have some type of independent review of the investigation that is conducted by members of our own police force. Another reason for strongly supporting that is that I think it is wrong to divide the responsibility of the chief of police.

4:10 p.m.

In other words, when you hire a chief of police, whether it is Harold Adamson, Jack Ackroyd or the next chief of police, you say: "You are responsible for discipline within your police force. The Police Act charges you with that responsibility." If you start to take some of the authority away and give it to somebody else, I think that is wrong. I think it is a step backwards, and I think all of the research has indicated that if you do that it is a step backwards and doesn't help the community, particularly the minorities, from what we have heard from other people who have experimented with that.

I think this is a very progressive next step in the handling of complaints. I think it will be interesting to find out over the next two or three years how many people do go to the public complaints commissioner and how many people are not satisfied with the investigation; in the investigations we have done, how much is not proper in the way we conducted them or if we have we done something we shouldn't have done. I think that will be disclosed.

Mr. Wrye: I know that you probably followed the testimony to some extent, but I must be honest with you that I have concerns under Bill 68 if it is adopted in its present form. I can only suggest to you the feeling that I have got out of these hearings and that others share, and that is that there are groups who have indicated they will do everything they can to make sure that this system--which I think we all want to work--doesn't work unless there are significant amendments.

Hon. Mr. McMurtry: That's a pretty good indication of their sense of responsibility, I think.

Mr. Wrye: Mr. Solicitor General, very few of them were contacted by anyone in your department, according to them.

Hon. Mr. McMurtry: Some of them have very short memories, because they can't even remember being in our office. In any event, we are well aware of what some of them--

Mr. Wrye: I say to you, with respect, a number of them just simply don't feel they can trust the system. I just wonder how you would respond.

Chief Ackroyd: I think I said earlier that since my appointment--I haven't been there 18 months officially, but since it was announced that I was the new chief of police in Metropolitan Toronto in March of last year it has been 18 months--in the present mechanics of the process, people are able to come to the Metropolitan Toronto Board of Commissioners of Police if they aren't satisfied with the way a complaint was handled and then go on up to the Ontario Police Commission if they still aren't satisfied.

Members of boards of commissioners of police, those five citizens who can come from any walk of life, are in my opinion another form of review. I look at the statistics in the 18 months that I have been chief, and I see the complaints of two people who were not satisfied and went to the police commission. I hear this organization, CIRPA, saying they are going to bring complaints to the police commission. That is what the police commission is there for.

They not only have the authority to call the chief of police if they are not satisfied--and some of them have done that--and I can personally look into it, but they can also go to the board of commissioners of police without any new bill. Or they can go to the Ontario Police Commission. They can go to their member of Parliament, to their local alderman, their local mayor. They can go to any number of people, including the press, and we will look into it.

I think the proof of the pudding will be how many people do come forward and say, "We are not satisfied," because that is the unknown quantity. There are people saying they are not satisfied, but who are these people who are not satisfied? Are there people who have dealt with our complaint bureau who are dissatisfied?



Mr. Wrye: According to these groups, there are. You are suggesting that they should have shown up at the commission.

Chief Ackroyd: Yes, I think they should have. I would hope they would go to Mr. Linden, if they are not satisfied, and let somebody look at it.

Mr. Wrye: Chief Ackroyd, I don't know whether this might be better directed to the superintendent, but were you able to provide the committee with a breakdown--there were some 900 complaints in 1980.

Chief Ackroyd: Yes, I broke them down.

The Vice-Chairman: Are there any other questions of the chief? Chief Ackroyd, on behalf of the committee, I wish to thank you very much for appearing, along with Superintendent Dickson and Sergeant Johnson, to assist the committee in its deliberations. Your testimony has been most helpful indeed. Thank you very much for coming. Enjoy the rest of your holiday, Chief, if you can.

Chief Ackroyd: My wife has me working with about a dozen jobs lined up; so I could get out of those jobs by coming down here today.

The Vice-Chairman: We have two items of business before we adjourn, gentlemen. One, exhibit 26, is an undated brief from the Jamaican Canadian Association received today by the clerk and duly filed.

The other relates to the matter raised by Mr. Piché this morning and in response to the clarifications sought by Mr. Piché from the Metropolitan Toronto corporation as to what official steps been taken by the Metro council with regard to initiating requests for the setting up of a public complaints commissioner.

You each have before you a memorandum from the clerk of the committee of today's date but which I will read into the record because the discussion this morning was verbal.

Mr. Philip: Mr. Chairman, on a point of order: In my opinion it is inappropriate for us to deal with that matter at this time, because we do not have the Hansard yet as to what exactly was said. Therefore, while I appreciate the memo prepared by the clerk, with Mr. Piché's kind assent I would suggest that we deal with this tomorrow morning when I believe the Hansard of yesterday will be available to us and we can see exactly what was said.

The Vice-Chairman: There is nothing out of order to have this on the record now. It will be in Hansard as well.

Mr. Philip: You are going to have to do it over again tomorrow.

The Vice-Chairman: We can discuss the matter tomorrow but, in view of the fact that this was raised this afternoon, I want to conclude the discussion on the matter; and you can pursue it further tomorrow if you wish.

The memorandum from the clerk reads as follows: "This afternoon I spoke to Walter Lotto, clerk of the municipality of Metropolitan Toronto. Mr. Lotto advised me that council had not debated Bill 68 but that they had debated the subject matter of complaints against police officers.

"On February 19, 1981, metropolitan council unanimously adopted the following motion: 'The metropolitan council again urges the province of Ontario to endorse the concept of a public complaints commissioner and appoint such an individual at the earliest practical opportunity.'

"The clerk of the council also advised me that metropolitan council had also dealt with the matter in 1978 and on a number of earlier occasions. The motion adopted by council on June 13, 1978, reads as follows: 'The metropolitan council recommends to the Ontario government that the legislation necessary to carry out the recommendations of the report of the royal commission into Metropolitan Toronto police practices be passed and put into effect as soon as possible.'"

Mr. Piché, does that answer your concerns as raised this morning and clarify the matter for you? Mr. Deputy, you had a further point on that?

Mr. Hilton: I was merely saying the report of the royal commission on Metropolitan Toronto police practices is commonly known as the Maloney report.

The Vice-Chairman: Fine. So it appears that the information that came across the press through the news media last evening was incorrect as to the allegations made by--

Mr. Philips: We cannot come to the conclusion until we check the Hansard, Mr. Chairman, and I think we should deal with the matter when we have the Hansard before us.

The Vice-Chairman: You can raise the matter again tomorrow if you wish, Mr. Philip; that is your prerogative.

Mr. Philip: I do not think we can come to conclusions without having evidence in front of us. It is foolish of us to even deal with this.

The Vice-Chairman: Just on the basis of what Mr. Piché heard on the news media, it is obviously contradictory to what this information provides to the committee.

Mr. Philip: It is not obviously contradictory until such time as we have the Hansards and find out what was said. Mr. Piché did us a service by bringing this matter to our attention. We should deal with it when we have the evidence before us.

The Vice-Chairman: What was said on the television last night is not in Hansard, Mr. Philip, with respect.

Mr. Philip: But what was said before the committee is in Hansard, and we do not have the Hansards yet.

The Vice-Chairman: You were here. You heard what he said.

Mr. Philip: I heard what he said. I want to check what he said, because it is not fair to him to come to any conclusions without having those words before us.

Mr. Mitchell: Mr. Chairman, if Mr. Philip has no recollection of Hansard, then I suggest it wait and he can raise it tomorrow.

The Vice-Chairman: Yes, he can. I am just saying I have made an observation based on--

Mr. Philip: Your observation is not based on any kind of information that is in front of you.

The Vice-Chairman: Mr. Philip, I was here and heard what was said this morning.

Mr. Philip: That's fine.

The Vice-Chairman: You may not choose to accept what Mr. Piché said to the committee. On the basis of this report--

Mr. Philip: I don't doubt Mr. Piché. Mr. Piché I have never doubted. Mr. Piché did us a service this morning.

The Vice-Chairman: I am not here to argue with you, Mr. Philip. You can take the position as you see fit.

Mr. Philip: It is too bad that other members on that side are not as responsible as Mr. Piché.

The Vice-Chairman: I am simply reporting on what was alleged to have been said in the news media, and this is the response to that matter.

Is there any further business before the committee rises?

Mr. Wrye: Mr. Chairman, just before we adjourn for the day, I would like to find out from you what the plan is for the remainder of the week in terms of our agenda.

The Vice-Chairman: This matter was also raised earlier in the day, Mr. Wrye, and there has been some indication that because it is obvious the clause-by-clause proceedings of the committee will not be concluded by Friday and we will have to deal with this matter on an ongoing basis while the House is in session, and because it was of some inconvenience to out-of-town members, there is consideration being given to cancelling the Friday sitting. But, as a matter of protocol, I am deferring that matter until tomorrow for the chairman to make a ruling based on what submissions members of the committee might have to make.

Mr. Mitchell: There is a motion of mine on the floor, Mr. Wrye, moving that we not sit this Friday but continuing the clause-by-clause discussion when we next meet.



The Vice-Chairman: We would start the clause-by-clause tomorrow morning.

Mr. Wrye: I have been given some indication from another member. As a new member, I simply beg your indulgence. I am going to be unable to attend tomorrow, as I have an emergency meeting in my riding which I must attend. One member suggested that if I missed a vote in the early going I would be precluded from voting on other aspects.

The Vice-Chairman: There is no problem.

Mr. Wrye: I simply need a substitute tomorrow?

The Vice-Chairman: You will need a substitute; that's right.

Mr. Wrye: Fine.

The committee adjourned at 4:22 p.m.



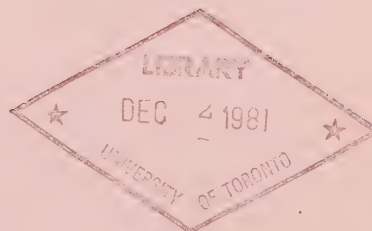
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT

WEDNESDAY, OCTOBER 7, 1981

Morning sitting





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Williams, J. (Oriole PC)  
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Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Andrewes

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister

McMurtry, Hon. R. R., Solicitor General

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 7, 1981

The committee met at 10:11 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: I think we can start. We have a quorum in place. Mr. Mitchell.

Mr. Mitchell: Mr. Chairman, yesterday in your absence I made a comment that it was my understanding that a number of the members of the committee are committed to other things. I think it would be advantageous for this committee not to sit on Friday, because of previous commitments of members.

I think it would look a little foolish--it is difficult to get substitutions--if this meeting were to be called and you wound up without a quorum. It would force a cancellation, which would not appear good.

I am prepared to move today--I agreed to hold it over until you were here--that the committee not sit on Friday, October 9, but that it resume its clause-by-clause consideration of Bill 68 on Thursday, October 15.

Mr. Laughren: Mr. Chairman, I am concerned about that motion, because I believe that next week the estimates committee starts sitting. I am only one member of this committee, and I realize that members have different obligations. I am not really a member of this committee. After we finish this week, I have to sit on the other standing committee that is going to be hearing estimates starting next week. I don't know how many members of the committee are in that same predicament.

It would seem to me the members who are on this committee now, and have been for the last three weeks, are the ones who should be pursuing the clause-by-clause to the bitter end, because we have been dealing with all the submissions and so forth. I am worried about that.

I thought there was a possibility we could get through the clause-by-clause on Friday. That cuts three days of solid clause-by-clause work. My sense is, and I could be totally wrong on this, that we could finish the clause-by-clause on Friday and we would not have to deal with it next week. I know that may be wishful thinking on my part.

Mr. Mitchell: I wish I could share that sense, but I nonestly expect there will be quite lengthy discussions on each clause. Let me assure you that I did take the opportunity to cneck; it is within the chairman's area of operation to set the order of business once we begin.

Mr. Laughren: I am not suggesting that anything is out of order.

Mr. Mitchell: I recognize the argument you are making, Mr. Laughren, but it might cause some difficulty. Because of other things that are pending, it has been very deliberately worded that we do this Thursday, because our first meeting day is Wednesday. I realized there are other things to be discussed that day; so I deliberately worded it for the Thursday.

Mr. Williams: Mr. Chairman, I think the motion is simply reflecting what seems to be a general consensus of the members, particularly members from out of town. This does not only affect the government caucus, as I know the Liberal caucus will also have some members who will not be available tomorrow.

Meanwhile, while Mr. Laughren raises a valid point that as a substitute member it would be his personal wish that he could see this bill through, I think there are members of this caucus as well who are in the same position. They are substitute members who will not be available should the clause-by-clause be extended beyond this week.

I think it has been indicated by other members of the committee that it is anticipated that the in-depth discussion of the clause-by-clause will undoubtedly take us beyond this week. That has been expressed by Mr. Breithaupt and others. I think we have to take notice of that fact and, therefore, we can alleviate a difficulty for the members; knowing we have to go into next week in any event and that is unavoidable, we should accommodate those out-of-town members and accede to the request as set out in the motion.

Mr. Philip: Mr. Chairman, I think we were given a job to do by the Legislature. There is no proof that we are necessarily going to have to go into Friday. It is our responsibility to finish that job. We did agree to sit this one Friday. We have not been sitting on Fridays in other weeks. We are just going to have the problem of new people coming into this committee if we prolong it. I think we may be finished by Thursday, and I suggest we stick to the present schedule.

Mr. Mitchell: Call the motion, Mr. Chairman.

Mr. Hennessy: Mr. Chairman, I think it's up to the committee to decide what they would like to do. I can see Mr. Laughren's and Mr. Philip's motive, and I have no objection to a vote. If you want not to sit on Friday, that is okay; but I don't object that much. If Mr. Laughren and Mr. Philip are so keen on it, why not sit on Thursday night?



Mr. Philip: I am willing to do that if that is your pleasure.

Mr. Hennessy: I am willing to sit as long as you sit.

Mr. Mitchell: Call the motion, Mr. Chairman.

Mr. Chairman: All those in favour of Mr. Mitchell's motion.

All those opposed.

Motion agreed to.

Mr. Chairman: As I arrived here outside the door at 10:03 this morning, I was handed a letter by the security guard that I believe I should read. It was hand-delivered on October 7, 1981. It is on the letterhead of Pat Sheppard, alderman for ward 9. It is addressed to me as chairman of this committee.

"Dear Mr. Chairman: I write you as an individual member of the metropolitan council to indicate my amazement and distress that the Metro chairman, Mr. Paul Godfrey, has represented to your committee a position of the Metro council on Bill 68. You should know that Metro council has not debated or taken a position on Bill 68 or the previous forms of the bill. Mr. Godfrey will be asked about his statements in Metro council, but your committee should view his comments as his own or, at best, his and some noncity-of-Toronto politicians'.

"I would welcome an invitation from your committee for a formal position to be taken by the Metro council. Mr. Godfrey's view may well prevail in such a Metro debate; but at least the opportunity is necessary before he appears with our alleged position. Yours truly, Pat Sheppard."

I am not exactly sure what this last paragraph means, when he says he would welcome an invitation from our committee for a formal position to be taken by the Metro council. If he means somehow that the deliberations of this committee be put off until Metro council has had a chance to formally debate it, I suggest that such cannot be, because we are on clause-by-clause now.

Perhaps this should be put in as an exhibit, should it not? Yes, thank you.

10:20 a.m.

The next thing we have in front of us--

Mr. Philip: Before you go on with that, Mr. Chairman, I think the position being taken by Alderman Sheppard is that Mr. Godfrey gave the wrong impression to this committee. I think the appropriate action for you to take as the chairman would be to forward the Hansard of Mr. Godfrey's statement.

I have just received a Hansard now. I was foolish to discuss this last night when we did not have it in front of us. Perhaps

the clerk can point out to us on what page Mr. Godfrey's statement about the position of Metro can be found, because I have just received it.

If there is conflicting evidence there, the appropriate thing would be to write to Mr. Godfrey and to Metro council to say we do have this conflicting information and we would like to point that out to them. They can take whatever actions they may deem fit against Mr. Godfrey if he has misled the committee or spoken out when he had no authority to do so.

Mr. Chairman: Mr. Philip, without prolonging this and having other members of the committee speak to it, I would say that in your first comment made were drawing a conclusion that something was wrong. I don't think that is what Alderman Sheppard's letter says. I think it simply says they have not taken any position at all. I do not think one can say it is either correct or incorrect. He is simply stating that there is no position.

Mr. Philip: Mr. Chairman, with the greatest of respect, what is wrong, and what Alderman Sheppard is expressing dismay at, is that it appears that this committee was misled by Mr. Godfrey. I am simply asking if we have located the specific statement by Mr. Godfrey to the committee, since we only got the Hansard minutes ago.

Mr. Chairman: Mr. Philip, in response to your question, the answer is no. My comment on your statement is no, with respect, you are incorrect. There is nowhere in that letter anything about being misled or any synonym of that. It says the Metro Toronto council has not taken any position.

Mr. Mitchell: Mr. Chairman--

Mr. Chairman: No, not yet, Mr. Mitchell. It has not debated or taken a position; therefore, "misled" is out of context. Therefore, I find your comments are not accurate.

With regard to your question as to whether it has been found, the clerk has just received it now and is at this point trying to locate the--

Mr. Mitchell: I have it. Allow me to read what Mr. Godfrey said on page four.

Mr. Chairman: If I let you sneak in, then I get six people back on a tandem.

Mr. Mitchell: It's an attempt to resolve the problem, Mr. Chairman. Mr. Godfrey says on page four at the bottom: "Yes, I believe that to be so. The Metropolitan Toronto council since 1975 have taken a position of being supportive of a process similar to what Mr. Maloney had brought forward. We have had other opportunities to endorse that concept--in 1977 with Mr. Morand's final report."

He also says earlier on, "I speak for five mayors in

Metropolitan Toronto, two of whom are with me here and, as I said, I expect Mayor Christie."

I have gone quickly through it and I don't believe I see any place, other than where it is his own comment, which is in line with what the clerk reported.

Mr. Philip: Mr. Chairman, with the greatest of respect, what I read from this is that Mr. Godfrey was indicating support by the Metro Toronto council for the bill as it now stands. In fact, no vote was ever taken that would indicate that support. Therefore, this committee was misled, no matter how inadvertently, by Mr. Godfrey. And I think that--

Mr. Chairman: Mr. Philip, again you are incorrect, in my submission.

Interjection.

Mr. Chairman: No. The chair has the floor, if that is possible. Again, you are reading into this letter a position in the affirmative of the bill, and it does not say that. He says that "Mr. Paul Godfrey has represented to your committee a position of the Metro council on Bill 68." He does not say positive, negative or otherwise. He says he has represented a position and he is informing us the council has not debated nor taken a position.

Mr. Philip: I do not see where it says that the council has not debated.

Mr. Chairman: He says: "You should know that Metro council has not debated or taken a position on Bill 68 or the previous forms of the bill." That is all he is advising us. He is then going on to say that they will discuss it in Metro council, but we should view it "as his own or, at best, his and some noncity-of-Toronto politicians'." He does not refer to either positive, negative or what the content of the Metro chairman's position was.

Again, I would like you not to read into that letter things that are not there. That is the only position I am taking here.

Mr. Philip: With the greatest of respect, the distress and amazement relates to the position that was presented by Mr. Godfrey, and the position is not consistent with what happened, or in this case what did not happen, in Metro Toronto council. That is what the distress is--not with the fact that Mr. Godfrey supported the bill, but that Mr. Godfrey led this committee to the belief that there was a consistent position taken by Metro council in support of the position of the bill.

Alderman Sheppard is saying he is distressed the position was placed, because it is an untrue position of Metro council.

Mr. Williams: Mr. Chairman, in Mr. Philip's usual irresponsible fashion, he has set out to foul-mouth those persons who do not necessarily agree with his particular point of view.



To suggest that the chairman of the Metropolitan Toronto corporation misled this committee is completely erroneous. It was made clear from the outset of Mr. Godfrey's remarks that he was giving an historical account of the council's dealings with this matter.

In your absence yesterday, Mr. Chairman, we received a memorandum from the clerk of this committee indicating the formal action that Metro Toronto council has taken in this matter in the past, on not one but two specific formal occasions. That was read into the record. Mr. Philip chose to ignore that in anticipation that the letter would be forthcoming from Mr. Sheppard this morning to muddy the waters on the issue.

Mr. Philip: On a point of order, Mr. Chairman: Mr. Williams has made an accusation. I had no knowledge that Alderman Sheppard was writing a letter this morning. The first I knew of it was about 15 minutes ago when it arrived at my office, hand delivered.

Mr. Williams: I suggest to you, Mr. Chairman, that we should ignore the irresponsible accusation that Mr. Godfrey misled this committee in the light of the testimony that is in Hansard and that was read into the record yesterday with regard to the formal Metro council action on these matters in the past.

Mr. Mitchell: Mr. Chairman, the report we got from the clerk of this committee yesterday, which was in response to the question raised yesterday morning, did not say that Bill 68 had been discussed. However, it did say, and I would be paraphrasing, that some form of review procedure be set up. I stand to be corrected. The wording escapes me at the moment.

10:30 a.m.

I think Mr. Godfrey made it very clear when he appeared--and I will just once more go to a couple of the statements he made. He said, "I speak for five mayors, two of whom are here with me," and he suggested that Mayor Redway and Mayor Harris also both support the position of Bill 68.

He goes on further, on page six, after he has talked about the Maloney report in the previous paragraph, to say, "Back in 1974 and 1975...the board of commissioners of police first talked about this and the metropolitan council debated it." That refers to a bill, not necessarily Bill 68, but something following that format.

I will reiterate once again that what was reported by the clerk and what has been said by Mr. Godfrey, as far as I can see from the testimony in Hansard, is quite in line.

Mr. Piché: Mr. Chairman, since I am the one who brought this to the attention of the committee, I would like you to go back to page 14, where the question appears. I think it's important that we get this thing clarified. Not that I don't believe the matter that was brought to our attention by Mr. Godfrey was done purposely, but the question was asked, "Can you

name one community-based group that is in support of the bill?" We are obviously talking about Bill 68 as it now stands. Mr. Godfrey's answer was, "Yes. The Metropolitan Toronto council, representing 2.2 million people."

This is what I wanted clarified yesterday. The answer we got clarified that Metro council was in favour of the commissioner but not necessarily the bill. I wanted this clarified for the record, because we have to know the information that is given to us. I don't think we should go back and forth. It's in the record and, if you look at page 14, that is where it is.

Mr. Laughren: Do you think it's clarified now?

Mr. Piché: I didn't say whether it's clarified or not.

Mr. Philip: I think we can read English, and it says fairly clearly in his answer that yes, the Metropolitan Toronto council is in favour of the bill. What Alderman Sheppard is saying is that there has been no vote. As Mr. Piché can surely attest, because of his long experience as mayor, you cannot be in favour of something unless you have voted on it; that is where you take a public stand. Mr. Piché is nodding his head in agreement.

Mr. Piché: I've got to be careful with you here.

Mr. Philip: Therefore, I submit that we have been given the wrong information. The record has now been corrected--

Mr. Piché: I wouldn't go as far as saying wrong information, Mr. Philip. When you are in front of a committee like this, you might say something that maybe isn't what you mean. I do that quite often myself.

Mr. Chairman: Gentlemen, is there a motion to be put? All I simply read was an innocent letter I was handed. Is there a motion leading from it?

Mr. Williams: I would move that the letter be received as an exhibit, Mr. Chairman.

Mr. Chairman: Did you make that a motion?

Mr. Williams: Yes, I did, that the letter be received as exhibit 25.

Mr. Chairman: No. It already has been entered as an exhibit.

Mr. Philip: It has already been tabled. I don't know how you can move a motion to have something done that is already done.

Mr. Williams: It wasn't made clear that it was.

Mr. Breithaupt: Perhaps I can make a suggestion. I regret, Mr. Chairman, that I was a few moments late, but I think I have gathered from the conversation the difficulty that has appeared. Mr. Sheppard is probably quite correct in saying that

there has not been a formal motion of council. On the other hand, Chairman Godfrey believes, from the support of the mayors that he has and his opinion as to the attitude of council, that he is correct in saying his council views this as the next logical step following the motions that have been passed.

What might be a way of resolving it--

Mr. Laughren: That's your legal opinion, Jim?

Mr. Breithaupt: No. I am just saying what might be a way of resolving it is to ask the metropolitan council for its opinion with respect to Bill 68 as it now is. If metropolitan council, after a debate, approves this bill, then that might be of use to the committee. If on the other hand they don't, I think we benefit from knowing that.

It is perhaps one way of dealing with it to sort out this difference of opinion as to what Metro council really wants to do or might do; one way would be to ask them to do something.

Mr. Mitchell: I would support that.

Mr. Chairman: would you make a motion then, keeping in mind that we may or may not hear from Metro council by the time we are through the clause-by-clause?

Mr. Breithaupt: I don't know whether that is useful, therefore, because I don't know their time schedule and such like. That was just a suggestion if that's a practical thing. Someone who has been on Metro council, like Mr. Williams has, could advise us.

Mr. Philip: I think we have made our point. Let's drop it.

Mr. Picné: Mr. Chairman, I think the point has been made. The clock has run out on this suggestion, and I think we should go on with the business at hand, because that could interfere with the committee's deliberations.

Mr. Chairman: Is it then the consensus that we drop that without a motion?

Mr. Laughren: I take back the earlier statement that we could probably finish clause-by-clause this week.

Mr. Philip: Mr. Chairman, I have a couple of other matters that I would like to raise before we deal with this bill, because I think they relate directly to the bill.

We have been asking for a good number of days for the Solicitor General to table the list of those hundreds of people or groups in the visible minority communities whom he has consulted. We still do not have that list. Since the minister clearly informed this committee that there were hundreds, I would like to know where that list of hundreds is and, if he doesn't have the list, I would ask that he correct the record.



Mr. Chairman: Does the parliamentary assistant or the Deputy Solicitor General have any comment on that?

Mr. MacQuarrie: Mr. Chairman, I would say in discussions with the minister and others in the ministry a lot of consultation has taken place with individual members of groups, and the minister has no intention of filing a list of the names of all of those with whom he consults. I can assure the committee that consultations have taken place. The deputy minister might wish to add to that.

Mr. Philip: It would be nice if you could produce at least one warm body. Nobody seems to--

Interjection.

Mr. Philip: As a follow-up to that, Mr. Chairman, just to deal with this tremendous overwhelming support that the minister claims he has out there in the community, I would like to bring to the committee's attention the fact that about three weeks ago the Association of Municipalities of Ontario sent a resolution to the Minister of Intergovernmental Affairs, passed by the municipalities of Ontario. I understand the normal procedure is that ministry would have forwarded it to the appropriate minister.

This minister, who loves to tell us about the tremendous support he has out there for the bill, either didn't receive it--and knowing the mail service in these buildings, that's a possibility--or saw fit not to share it with us. But I would certainly like to read into the record the position taken by the Association of Municipalities of Ontario at their annual conference, because I am sure it certainly puts in doubt the tremendous silent majority support out there that the minister likes to lead this committee to believe he has. It's LE-2 and it states:

"Request that the proposed process of public complaints against police officers be extended to all municipalities.

"Whereas the government of the province of Ontario has introduced legislation to improve methods of processing complaints by members of the public against police officers in Metropolitan Toronto; and

"Whereas it is in the interest of all citizens and police forces throughout the province that there be available to them fair and equitable procedures for dealing with complaints against police officers; and"--

It's important that the committee listen to the next "whereas," because I think it might cast some shadow on the support that particularly section 5 of this bill may have.

10:40 a.m.

"Whereas there is concern that any such procedures be based upon independent and unbiased investigations of any complaint and that any such investigations be professionally pursued; and

"Whereas the proposed procedures are based upon an internal investigation by the police force concerned, which investigation is subject only to monitoring, subsequent review and possible intervention by the public complaints commissioner;

"Therefore be it resolved that the government of the province of Ontario be petitioned to extend the application of the act to provide for the implementation of its provisions within any municipality upon the initiative of the municipality; and"--

Here's the important section as far as this bill is concerned, a very important section:

"That the investigations of complaints be under the supervision of the public complaints commissioner and that each investigation employ persons external to the police force against which a complaint has been made."

I'm sorry, Mr. Chairman, for the sake of other members of the committee, that I do not have copies of this. I will get some made by the clerk.

When I found out last night from an alderman in Windsor that such a motion had been passed, I called the Association of Municipalities of Ontario this morning. They sent it over to me, and I was met at the door with it.

It clearly indicates that the municipalities of Ontario do not support the internal investigations and do not support section 5 of the bill. Therefore, one must ask the minister who those supporters are. He can't come up with anybody from the minority communities, and now we find out that the municipalities of Ontario--nearly great representatives of any kind of small minority interest groups, but rather representatives of all of the people--don't agree with it.

Mr. Williams: On a point of order, Mr. Chairman: I'm not clear whether Mr. Philip is introducing for exhibit purposes a document that he feels would be of interest to the members of the committee. If so, I think it should be filed without benefit of editorial comment.

It's my understanding that we're here to deal with the clause-by-clause of the bill today. If there's another document that is of use to the committee before it starts those deliberations, let's have it filed. But I don't think we should be debating the issue at this point. That will be done during the clause-by-clause.

Mr. Philip: Mr. Chairman, it's more serious than that.

Mr. Williams: Would you like to rule on that?

Mr. Philip: I would ask that you investigate why this was not delivered to the committee, if it wasn't received by the Solicitor General under the normal process. Three weeks is a long time. One would think that the minister had received it. It's unfortunate that it wasn't sent to the committee directly.

Mr. Chairman: Mr. Philip, on the first part of that as to why: I am advised by the clerk that the committee has not yet received a copy of that. Perhaps the deputy minister would like to comment.

Mr. Hilton: My only comment would be that, so far as I know and so far as is known by Mr. Ritchie, who has been collecting all the documents related to this bill, we have not received it at the Ministry of the Solicitor General, because all of his mail as Solicitor General also comes to that office and is reviewed by us.

Mr. Philip: Would it have been sent to the Attorney General instead of the Solicitor General by mistake? Can that be checked out?

Mr. Piché: Or was it sent at all? If you're talking of AMO, that's only a month ago--late August.

Mr. Philip: No. I am informed by a telephone conversation this morning that it was definitely sent via the usual channels and would have been sent about three weeks ago.

Mr. Piché: But you say that motion went through AMO at the end of August?

Mr. MacQuarrie: To whom was it sent?

Mr. Philip: It would have been sent to Tom Wells.

Interjections.

Mr. Williams: Mr. Chairman, to expedite matters can't we simply have this filed officially and check into when it was sent from Windsor?

Mr. Philip: I'd like to table it as evidence. It's certainly evidence that there is not support out there for this bill in its present form.

Interjection.

Mr. Chairman: No.

Mr. MacQuarrie: Mr. Chairman, the bill before us is a pilot project applicable only to Metropolitan Toronto. AMO's request that the complaints procedure be made province-wide is not now under consideration. They do make some observations with respect to the investigative process. I assume that Mr. Philip is introducing the matter simply as--

Mr. Laughren: An example of majority government; that's what it is.

Mr. MacQuarrie: No--as support for the stand he and others here have taken here that the investigative process should be separated from the police department proper. That's something we'll have to deal with in clause-by-clause.



Interjections.

Mr. Philip: There's nobody out there who is in support of the bill other than the Conservative Party.

Mr. Chairman: Mr. Philip, would you please enter that as an exhibit?

Mr. Philip: It has been entered.

Mr. Chairman: Fine. The chair is ruling that we are off beyond--the consensus of the committee some time back was that this morning would be clause-by-clause. These other matters can be brought up during the clause-by-clause if they are relevant to a particular section.

We have reprinted copies that are not yet distributed. Does the committee wish to use the version of Bill 68 as reprinted by the legislative counsel office? Yes. The reason is that there's a reference there to the RSO 1970, and it has been reprinted to bring it up to date with the reference to the RSO 1980. The deputy minister has something to say.

Mr. Breithaupt: You surely didn't bother to reprint the bill just for that reason, I would hope.

Mr. Hilton: Mr. Chairman, I have been asked by the legislative counsel to speak to this matter. He was here yesterday. He sought to speak to you, sir, but you were unavailable yesterday. He wished to explain to the committee that there was to be a substitute of the bill, as there will be to all bills. You will notice down the side of page eight that there's a reference to the RSO 1971, chapter 49; the same reference in the reprint is to RSO 1980, chapter 411.

There is also the use of a new format, which can be readily seen under section 18. Under the old section it said, "the board under clause b of subsection 1 of section 10." The new form is, "the chief of police refer the matter to the board under clause 10(lb)." It's merely a matter of form in semantics, and he wished to advise the committee that, in the amendments you were contemplating or might be contemplating, you bear in mind the new form, which will be used from here on. The clerk has for distribution to you Bill 68 reprinted in the new form.

Mr. Chairman: Is it the consensus of the committee that this new form be so used?

Mr. Philip: With the understanding that some of our amendments may have been on the old form and if there are any changes then the legislative counsel will simply make them rather than our having to redraft our amendments and so forth.

Mr. Breithaupt: I guess it's only money, Mr. Chairman. We can correct as we go through, I'm sure, quite nicely.

Mr. Chairman: Thank you. Let's use the new one. The Solicitor General is unavoidably detained in other matters at this

moment, understandably, and his statement at this point will be read by Mr. MacQuarrie, the parliamentary assistant.

Mr. Laughren: I didn't understand the context of "understandably."

Mr. Chairman: That's an editorial comment by the chair, Mr. Laughren.

Mr. MacQuarrie: In the absence of the Solicitor General, who I hope will be joining us some time shortly, I would like to read the statement he prepared in respect of the bill prior to clause-by-clause consideration.

"Mr. Chairman, first of all, I would like to express my appreciation to all those interested groups and citizens who took the time to submit briefs and to appear before this committee over the past two and a half weeks.

"It is a valuable experience for all of us as legislators to have the benefit of the views of citizens in other fields as we consider such significant legislation.

"Again, I would remind committee members that this is a pilot project. We are engaged in a major departure from existing procedures, and the project will be carefully monitored. Further refinements are possible even within the three-year trial period.

10:50 a.m.

"Seldom has any legislation been the product of more extensive studies than this complaints against the police procedure.

"Furthermore, as a result of continuing consultation, significant refinements have been made to this legislation since its first introduction in the Legislature.

"I also believe that Metropolitan Toronto Chairman Paul Godfrey made a significant observation Monday when he noted that Bill 68 is not for any specific group in the community but for all the citizens of Metropolitan Toronto.

"As a result of the deliberations of the past two and a half weeks, we are suggesting some amendments to the legislation, and they are as follows:

"We are proposing a revision in section 8 along the lines suggested by Mr. Borovoy in his submission. The amendment would provide that complaints may be informally resolved not only before but also after they have been investigated or reviewed.

"In section 10, we are taking the advice of Paul Walter, president of the Metropolitan Toronto Police Association, who suggested that the section be clarified to prevent an officer from being subjected to both a police complaints board hearing and a disciplinary charge under the Police Act.

"Section 10 would also be amended, at the suggestion of Mr. Borovoy, to require the chief to give reasons where he decides just to counsel or caution the police officer.

"Section 11 would be amended, at the suggestion of Mr. Batchelor, to require the chief to give reasons for his decision on a disciplinary hearing.

"Clause 14(lc) would be altered to make it mandatory for the public complaints commissioner to review the record of an informal resolution of a complaint.

"Clause 14(3)(c), which allows an early investigation by the public complaints commissioner in special cases, has been criticized as being vague and unclear. We are proposing a clarification along the lines suggested by Mr. Batchelor. The amendment would authorize intervention where the public complaints commissioner has reason to believe that the initial investigation is being unduly delayed or otherwise conducted improperly.

"An additional clause in section 19, at the suggestion of Mr. Borovoy, would give the complainant the same opportunity as the police officer to examine documentary evidence before a board hearing.

"Section 19(14) would be amended to include suspension without pay as a possible penalty. This would fill a gap between the extremes in the area of penalties, namely, dismissal and reprimand.

"Section 20 would be altered to enlarge the grounds of appeal from a decision of the police complaints board, another suggestion from the police association. The penalty could be appealed and also any question other than questions of fact alone.

"Section 22 would be amended to protect oral statements from use in other proceedings, the same way that written documents are protected. This was suggested by both the Canadian Civil Liberties Association and the Metropolitan Toronto Police Association.

"We believe that these are useful amendments, fair to both complainants and police officers. We believe they strengthen further an already sound bill."

Mr. Breithaupt: Mr. Chairman, I presume that we will be receiving the amendments as they are developed. I suppose I should say it is somewhat unfortunate that the amendments could not have been included when we went through the reprinting of the bill just to correct the references to the Revised Statutes of Ontario, 1980.

It might be appropriate at this time for the official opposition to make some comments on the results of these past two weeks. With your approval, my colleague Mr. Elston, who is our critic for the Ministry of the Solicitor General, will make some brief, general comments on the changes in all that we think would be useful in the bill.



Mr. Elston: If that is appropriate, I presume it is in order. We are pleased that the Solicitor General has benefited by the presentations that have been made before us in this last two and a half weeks by various individuals, some of whom he obviously was not able to meet with before formally presenting this bill to the Legislative Assembly.

It is of interest that the main area of discussion has been to try to set up a process that is going to receive the public confidence and at the same time be balanced enough so that it also has the full support of not only the Metropolitan Toronto Police Force but also the association, which has been so ably represented here by its president, Mr. Walter.

Whereas we have had indication by the Solicitor General's parliamentary assistant that there are some worthwhile amendments being proposed and introduced this morning, it seems to me that there are certain areas it may well be advisable that we consider so that we can go ahead and maybe even improve more fully on a bill which the Solicitor General has felt is very good in its current state.

We have had representations by a good number of people who seem to have put together very credible briefs. They have advised us of the position that they foresee being taken by members of their groups. Unfortunately, I think we have probably spent too much time in this committee, from one side or another, trying to discredit the position in which these people came to us and presented their material in front of us.

I say that not only in relation to the people who were here representing what may be termed the visible minorities and other groups, who may have coalesced to speak in opposition to this bill, but also in relation to the people who came here after having admitted to having had consultations with the Solicitor General, namely, the Metropolitan Toronto council chairman. I find it discouraging that we have to engage at length in activity like that.

I think we will now have to take the briefs which have been presented to us and go through them, and it is incumbent upon us to try to reach the balance that will instil some confidence in the people and groups represented in front of us. The public requires the assurance of a competent, fair and impartial investigation in all cases, and not just in cases that are coming from a certain area.

I am pleased that the Solicitor General has recognized that all cases must be dealt with fairly. He also recognizes the fact that not only must they be dealt with fairly but also it must appear to the people involved in the process that they are being dealt with fairly.

11 a.m.

In relation to that it is no less important that the police require assurances that, in the mind of the public, all investigations are perceived to have been competently, fairly and

impartially conducted. It struck me, when we were listening to the president of the police association, that he advised us that he would be very pleased with an independent investigation or, at least, would go along with an independent investigation as long as there were certain rights that were built into the process to protect his people from being unfairly handled during the investigative proceedings.

I think to some extent the Solicitor General has picked up a couple of suggestions in the amendments proposed this morning on his behalf by Mr. MacQuarrie which will add further protection to police officers in carrying out the investigation.

I will not go any further, but perhaps what I will do is just go through a number of recommendations which we have and which I think will help to make this bill better perceived by the public, and by all involved, to be a fair process in dealing with complaints. If I may, I will just read these off.

1. In each case the decision as to who will conduct the investigation of a complaint will be made by the public complaints commissioner, the initial decision to be made as soon as possible after the receipt of a complaint by the commissioner and in any event not less than seven days after the initial receipt of that complaint.

2. Informal resolutions must be approved by the PCC. In certain situations we have an amendment along those lines dealing with the investigative procedures that are being proposed by the Solicitor General to allow informal resolutions before and after an investigation.

3. Section 9(3) of the act is to be amended to include the word "forthwith" after the word "shall" in line six; so that it would read: "Notwithstanding subsection 2, the person in charge of the bureau may decide not to make a report to the person who made the complaint and the police officer concerned where in his opinion to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the bureau shall forthwith notify the public complaints commissioner of the reason for his decision."

4. Section 14(3c) should be amended by deleting all the words after the word "interest" in line three so that we would end up with a section that reads: "Where there are reasonable grounds to believe that the inquiry and investigation is essential in the public interest." That would go a long way to alleviating any concern or problem with delineating when the public complaints commissioner could come into the operation of active investigation proceedings.

I think the Solicitor General has proposed that the section be amended--he says to "clarify the situation"--but I think in many cases his amendment may very well limit the times during which the public complaints commissioner could make the initial step to go in and investigate early. He seems to be saying to us in his amendment that only during situations where there is undue delay, or something akin to that, will the public complaints

commissioner be allowed to make a decision to enter the process. I think it is unfortunate that in many cases he is limiting the public complaints commissioner to that role. I think the perceptions of the public must be dealt with in such a way as to give the public complaints commissioner the right and the ability to go in when he sees the public interest unduly affected.

5. Section 14(4) should be deleted in its entirety.

Mr. Williams: Which section?

Mr. Elston: Section 14(4).

Mr. Philip: Good idea.

Mr. Elston: That is the one dealing with a review of the decision under the Judicial Review Procedure Act.

6. A right of appeal ought to be provided to the complainant dissatisfied with the PCC decision not to order a hearing upon a review of the matter. Further, section 15(2) ought to be amended to reflect the change as well. Those two go hand in hand.

7. The nature and the conduct of the board hearing ought to be amended to reflect in practice and in philosophy a movement towards administrative quasi-judicial law rather than criminal law. I have several suggestions to make under that line:

(a) Provide a right of review for the PCC decision concerning the nature of the alleged complaint, whether it be of a minor or serious nature.

(b) In section 19(4) we were going to recommend as well that the complainant be afforded the same right of examination as the officer. I am pleased to see that the Solicitor General has recommended that change be made.

(c) If, in section 19(10), the police officer chooses to remain silent, an inference adverse to his interests in the case may be drawn in the appropriate circumstances. I think that section should be amended to reflect that.

We have heard many times that there may be some problems with co-operation. I do not believe, after listening to members of the police association and the police department who have appeared in front of us, that that is going to be a difficult concern. I was pleased to hear Chief Jack Ackroyd say that he would be co-operating in whatever the situation required, that as a police officer it was his duty to do so. I am pleased to hear that.

(d) In section 19(12) the burden of proof ought to be reduced to on a balance of probabilities. This again would fall more into line with the setting up of a tribunal rather than going through the criminal onus.

(e) In section 19(13) and 19(14) the terminology "guilt" ought to be deleted and in its place inserted "an act of misconduct." That would remove from it the idea that there was a criminal hearing in process.



8. Moving on to the panel decision: In the case of a majority decision by a three-panel board, there ought to be an automatic right of appeal, which may or may not be exercised. The dissenting board member must submit written reasons for his dissent, and there should be a reflection of that in the amendments to those sections.

9. The board must have the right to award compensation in appropriate cases both to a complainant against whom it has been found an act of misconduct has been committed, and in favour of a police officer against whom an allegation of minor or serious misconduct has been found to be without foundation. We have heard from both sides that the question of compensation has been a concern to both those who would be launching the procedure of a complaint and to the police officer who has been conducting a defence of that.

Mr. Chairman: Mr. Elston, for the sake of the committee, could you back up just a little bit on that appeal from a three-man board? Do you have any thoughts as to where it would be appealed from there?

Mr. Elston: I have not delineated that specifically.

Mr. Philip: May we deal with that when we come to that section?

Mr. Chairman: I thought it was rather left hanging. That is why I interjected.

Mr. Elston: I had not considered where it would go, but I presume we could go to a commission.

Mr. Philip: I think a number of our amendments, including some of the ones that have just been suggested by the Liberal Party, may need the tidying up of later sections in the bill, and it is the normal function of the legislative counsel to assist us with that. I think you will find some of that was mine as well.

Mr. Chairman: I apologize for the interjection, Mr. Elston. Carry on.

Mr. Elston: I am sure you had the day off yesterday just to prepare yourself for this trying day.

Mr. Philip: It is good to have you back, though, I must say.

Mr. Mitchell: The caucuses are after something.

Mr. Philip: Mr. Chairman, with all due respect, I think you are almost as good as the previous chairman of this committee.

Mr. Hennessy: He is not as biased, that's all.

Mr. Elston: May we continue? The last comment concerning compensation was made to deal with the problem of complainants and

police officers who feel they may be taken through an expensive process without the necessary means to deal with it. Of course, the police officer can receive compensation, but there is no situation at this point where the complainant would be compensated if he has to go through a long hearing process.

11:10 a.m.

This would represent a bit of a compromise from the position where there was a suggestion of a legal aid certificate being made available to the complainant or a situation where the PCC actually acted on behalf of the complainant and had carriage of the action on behalf of the complainant. I think that would not be appropriate. We ought to preserve, in the best manner possible, the independence of the public complaints commissioner.

This would represent a situation where a complainant with a well-founded complaint would receive compensation. It would also deal with a situation where the police officer met with a frivolous charge and would then also receive compensation.

Our final recommendation is that, at the end of the pilot project period, the study and evaluation of the project should be conducted by an outside body, which would appear to be demonstratively qualified and capable. I think we should be sure there is an independent review of the project so that we can have a good account of how it has progressed in its term in office. We may be able to have the assistance of some independent authority, I presume.

In any event, the sole purpose of suggesting these amendments is because we regard this bill as a mechanism of great importance to us in Metropolitan Toronto. It is going to have significance, despite the comments made earlier. I think it is going to have very great significance to the rest of Ontario if this project works out well.

Our amendments are designed to help deal with complaints in the best manner possible and in the best interests of the community of Metropolitan Toronto as a whole and, ultimately, of the residents of Ontario. These best interests are indivisible. They cannot be parcelled into smaller portions in the community. I was happy to hear the Solicitor General's comments that we're dealing with the entire populace of Metropolitan Toronto and we must, therefore, not splinter ourselves into various communities, but deal with the whole.

As we go forward in the clause-by-clause, we will be bringing in copies of these amendments we will be proposing; and it will be helpful to have the copies of the amendments suggested by the Solicitor General to help us prepare our amendments, since we do not want to duplicate too many of the clauses.

Mr. Chairman, thank you for the opportunity of putting our views before you before we have the clause-by-clause.

Mr. Chairman: Mr. Elston, could we perhaps have your remarks, or at least your proposed amendments, so the clerk can photocopy them?

Mr. Laughren: In view of the rather delightful precedent established by Mr. Breithaupt of the Liberal Party and approved by the chair, I too would like to introduce our next speaker.

Mr. Philip has an abiding interest in justice in the province and is the most outstanding chairman the justice committee has ever had in the history of Ontario. It is appropriate that he has been here to add some balance and occasionally some glimmer of truth to the proceedings.

I hope you noticed over the last couple of weeks that whenever Mr. Philip speaks Mr. McMurtry listens, which is more than he has done to the visible minority groups out there all across the province.

It is with great pleasure that I introduce our next speaker, Mr. Ed Philip.

Mr. Philip: I am announcing tomorrow and I will be endorsed by Mr. Laughren.

I do not have a prepared statement, but I would like to deal with a few issues I think are central to this bill. I think I have dealt with some of them in some of the points I made before.

Interjections.

Mr. Chairman: Gentlemen, Mr. Philip has the floor. You are a little unruly.

Mr. Philip: I think I have dealt with some of the points in some of the issues I have raised before this committee clause-by-clause stage.

It is fairly clear now there is very little support for the bill in its present form out there in the community. We have had no indication, unlike the statements indicated by the chairman of Metro, that there has been ever any kind of motion passed at Metro concerning this bill.

In fact, if we take the recommendation that, I believe, was passed by Metro council and the preamble by Mr. Walter Pitman, it reads as follows: "That Metro council recommend to the Ontario government that legislation necessary to carry out the recommendations of the report of the royal commission into Metropolitan Toronto police practices be passed and put into effect as soon as possible."

The preamble to that reads as follows: "The Honourable Justice Morand concluded that the present system of citizen complaint was not effective and that a new system must be developed for prompt, impartial, vigorous and independent investigation of complaints. He recommended that a citizen complaint procedure having as its central aspect an independent investigation and a review of police conduct and an independent tribunal for hearing the complaints be implemented by appropriate provincial legislation forthwith."



It was on that premise of an independent investigation, which is found clearly in the Pitman report, that Metro council dealt, as I understand, with recommendation 4-16.

We have seen similarly, in exhibit 28 which I have just tabled this morning, that the Association of Municipalities of Ontario does not agree with the bill in its present form. These are the representatives of people across the province. They are people who have to deal with police complaints and with the management of police forces across this province. They have clearly chastised the government in their resolution for not having an independent investigation system, if you look at the resolution that was passed.

It is unfortunate, through whatever mechanism, that this government, which apparently had been sent this recommendation three weeks ago, did not see fit to table it as an exhibit. Perhaps it is a misunderstanding. Perhaps it is in the interoffice mail. But it is certainly distressing. It was only by accident I found out about this resolution in a telephone conversation with an alderman in Windsor last night and a subsequent telephone conversation with AMO early this morning.

We have had delegation after delegation before this committee. There has not been one delegation from a community group that has expressed support for this bill, at least with sections 5 and 10 of the bill. They have all asked for an independent investigation. They have pointed out that, unless this happens, the bill will be useless because the people they represent will not have faith in it.

The minister has indicated that he has spoken to hundreds of people out there in the visible minority communities. When we challenged him to produce a list, he refused to do so. Where are those people? Can he produce even one who supports his bill, one out of the hundreds he claims? He has not done so.

His attitude towards those groups was clearly evident in the fact--and you can check this with the clerk--that every time one of those minority groups came he was suddenly absent. But when somebody supporting his bill in the form in which he has it was here, he suddenly materialized. I think that shows the arrogance of this ministry towards the people out there.

He will consult with his favourite people and the graduates of Upper Canada College and the club he belongs to and the people he puts on commissions. But when it comes to talking to ordinary people who are affected by this bill, he is not even present in the committee to listen to their views. I believe the only exception to that was the Canadian Civil Liberties Association, and Alan Borovoy is hardly a person you ignore at any time. But when it came to ordinary people in ordinary community groups, he suddenly had other things to do.

When the chief of police comes, a man for whom I have the greatest of respect--thank heavens he is the chief of police in Toronto; when I see other chiefs across the province and across the nation, I think how lucky we are to have that gentleman

there--when he appears, there is the minister in the chair. And it's the same with other people who are in support of his particular position, such as Paul Godfrey. If there was ever a Tory--well, I won't use the word; I'll say supplicant--it is Paul Godfrey.

The minister is not prepared to listen to these people; instead, he slurs them. He says two things: (1) the leadership of these minority communities doesn't really represent their members, and it is clearly indicated that he stated this; and (2) these groups really don't understand the implications of the bill. One is that they don't represent their people, and the other is that they are stupid.

I can assure you, as a person who has listened to these groups and who has been here, unlike the minister, they do understand what the bill is all about and they do understand what section 5 is all about. Unlike the minister, they do represent the people they say they represent and they are leaders in their communities.

He isn't even satisfied with slurring them by indicating they don't know what they are talking about or they don't represent the people. He has Paul Godfrey come and further slur some of those associations through the despicable tactic of calling them vigilante groups. We saw those kinds of McCarthyist tactics used before this committee.

Mr. Piché: On a point of order, Mr. Chairman: I think those statements are a little too strong. I don't think the minister slurred anybody. I would like to make a correction here. I think it is important--

Mr. Philip: I didn't say the minister; I said Paul Godfrey.

Mr. Piché: You used the word "slur," and I don't think the minister did that. I think these are unfair statements.

Mr. Philip: That is your prerogative.

Mr. Piché: Yes. That is why I had a point of order.

Mr. Philip: Since it was pointed out to me by Mr. Piché, and he is a person whose opinion I do appreciate, I will remove the word "slur," simply because it was him and because I appreciate he has been a fine mayor and understands these matters. Because it was him and because I respect him, I will withdraw the word "slur."

Mr. Chairman: Thank you, Mr. Philip. Will you carry on?

Mr. Philip: Do you want me to substitute another word?

Mr. Chairman: No. Perhaps grammatically you should say, "Since it is he." As an ex-school teacher, perhaps we would like that.

Mr. Philip: "He" instead of "slur"?

Mr. Chairman: No. "He" instead of "him."

Mr. Philip: Oh, I taught social sciences; so I am not "Englished" very well. It's my journalistic background that makes me poor at grammar. I always had somebody to proofread for me.

We have before us the essential issue as to whether we are going to create a bill that will have the confidence of the community or whether we are going to create one that is simply window-dressing and that will not be used by the people out there.

We are suggesting a number of amendments. I have indicated that we will be moving amendments to sections 5, 10, 14, 18 and 27. I believe one or two of these amendments are similar to the amendments of the Liberal critic, and I am pleased to see there is a meeting of minds in that regard.

I will not go through in detail each of the amendments. Basically, the amendment to section 5(1) simply says that the police complaints board will have attached to it an investigative branch, and the amendment to section 10(1) adds the following: "provided that any officer required in such disciplinary proceedings to furnish reports and answers to questions be given prior notice of the substance of accusations against him and a reasonable opportunity for prior consultation with an agent or counsel." We feel that will make it more just to the police officer.

We have an amendment to section 14(3), "Upon the request of the chief of police," and we have added, "or upon the request of a complainant or where he believes it is in the public interest for him to do so."

Section 14(4): We agree with the position spelled out by the Liberals, and earlier, when this point came up, we had indicated our support to delete 14(4).

Section 18(4): We believe that there should be somebody there representing the complainant and, therefore, we would add, "One member shall be a person appointed on the recommendation of the Canadian Civil Liberties Association."

Last, section 27: We are concerned about what happens with the bill in the long term, and therefore we would repeal the section and say, "Upon repeal, a detailed report on the operation of the project during its three years of existence shall be prepared by the board and forwarded for consideration by the council of Metropolitan Toronto and by the justice committee of this Legislature." This is a reporting back mechanism and evaluation process that would, of course, take place in three years' time by the Legislature.

Mr. Laughren: Mr. Philip will be chairman again by then.

Mr. Philip: I was hoping to be minister by then, Mr. Laughren.



Mr. Laughren: Sorry.

Mr. Philip: Those are some of the changes we would like. I am disappointed that, in spite of all of the evidence provided, in spite of all of the groups that came before this committee, the minister in his opening statement, read by his parliamentary assistant, did not indicate that he was willing to change section 5. That is the key issue; unless we find that there are going to be changes in that section, I am afraid I will have no alternative but to oppose the bill.

I don't agree that something is better than nothing; I think something that pretends to be something else is misleading. This does not have the support of the community and, without a substantial change in section 5, it is better to have nothing than to create something that simply will be unworkable and will lead to the discredit of a complaints procedure, period.

The minister has talked about all the various reports and pointed out that not one of them had recommended an independent review procedure. The fact is that the literature across the nation now, and in various countries, indicates that the present internal investigation systems simply do not work either.

What we are challenging the government to do is to try to be the most innovative, to try to go in the direction that the study in the Chicago system stated, namely, that even the Chicago system has not gone far enough and that they should go more in the direction we are advocating.

We are suggesting that, because the police in Metropolitan Toronto do not have the corruption that has existed and is existing in some other North American cities, because they have a chief of police who has shown moderation and because we do not have the kinds of tensions that are at the extreme of polarization that they have in other countries, it is here that we can successfully try an innovative system. The proposals that we are making are a compliment to the police in Metropolitan Toronto, not an attack on them, as some would have you believe.

11:30 a.m.

Every indication from the police and from the police chief is that, unlike Philadelphia or other cities, they would prefer to have a different system but, if the system we are advocating were implemented, they would co-operate with it. That shows a lot of maturity on their part and it is to their credit. It is because we can get that kind of co-operation in Toronto that we are advocating these more progressive changes.

That concludes my remarks, Mr. Chairman.

Mr. Chairman: Fine. Thank you, Mr. Philip. Shall we commence our clause-by-clause consideration of the bill? This is Bill 68, an Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

On section 1:

Are there any comments, questions or amendments to section 1, the definition section?

Mr. Philip: What are you doing now, Mr. Chairman? I am sorry.

Mr. Chairman: Section 1. Shall section 1 carry?

Mr. Philip: Can we have an agreement, Mr. Chairman? For legislative drafting purposes, if certain motions are carried later on it may be necessary to go back to tidy up wording and add definitions and things like that. Members of this committee are not legislative draftsmen and therefore, while we can carry a section, it should be understood that we have an agreement to open it up again if some other section carries that requires alteration.

Mr. Chairman: Yes. To make it consistent with our previous practice.

Mr. MacQuarrie: That is not unreasonable.

Mr. Chairman: Fine. Thank you. That is a consensus.

Section 1 agreed to.

Sections 2 to 4, inclusive, agreed to.

On section 5:

Mr. Philip: Mr. Chairman, perhaps the clerk can advise me now best to deal with this. Basically I want the section to read as follows:

"The public complaints board shall establish and maintain for the purposes of this act an investigative branch to be known as the public complaints board complaints investigation bureau." I have underlined the changes. Also, that subsection 2 be amended to read as follows, "The public complaints board shall ensure..."

The easiest way might be to delete the present section and put in the new section. Would that be your advice to me?

Mr. Chairman: I would think so, because you have made two or three amendments to that subsection.

Mr. Philip: I think that may be the simplest way.

Mr. Chairman: Yes. It is only three lines. So your motion is that section 5(1) be deleted in its entirety.

Mr. Philip: And that the following be substituted therefor: "The public complaints board shall establish and maintain for the purposes of this act an investigative branch to be known as the public complaints board complaints investigation bureau." Would you like me to speak to that?

Mr. Chairman: Perhaps, since it is in the same tenor, in section 5(2) you are deleting the words "the chief of police" at the commencement and in place thereof you wish the words--

Mr. Philip: "The public complaints board."

Mr. Chairman: Correct. Since they are of the same tenor, your motion would be on both of those.

Mr. Philip: Mr. Chairman, in speaking to my motion, I have already pointed out to you the arguments of why it is important that justice be seen to be done by community groups and by individuals in the community.

What we are asking for is an independent investigative branch. This would consist of people who are properly trained, of course, in police investigation techniques. Many of them would probably be ex-police officers or people who have been involved in police work in the past, but it would be an arm's-length relationship with the present police system.

There is no one from any of the community groups that the minister can produce who supports his section, and everyone who has come forward from the community groups supports my recommendation, the recommendation of the New Democratic Party.

I would say this is consistent with the Pitman report. It is supported by the resolution by the Association of Municipalities of Ontario, it is supported by the community groups, it is supported by the Canadian Civil Liberties Association, and indeed it is supported by many of the police officers that I talk to on the beat because they feel that when they are accused of something they would like to know that once they are proven innocent there is not any feeling out in the community that something somehow is being done internally that got them off.

I know that people like Mr. Piché have some concerns, and I ask that it not break down on party lines. In the past this committee has split across party lines on matters of substance. I have voted differently from other members of my party in this committee on some occasions. Other members of this justice committee have split across party lines, and I am hoping that some of the Conservative members, people from enlightened, progressive areas like Sudbury and Kapuskasing--

Mr. Laughren: Thunder Bay.

Mr. Philip: --and Thunder Bay will listen. I know that I will not win the support of the member for Oriole.

Mr. Williams: That's for sure.

Mr. Philip: But I am hoping that I would win the support at least of the member for Sudbury and from a man who understands what it is to be courageous. My father was a prizefighter and, therefore, I understand that kind of rustic individualism.

Mr. Hennessy: Did he win anything?



Mr. Philip: Yes, he did. He was light heavyweight champion. That is what you were, wasn't it?

Mr. Laughren: Of Etobicoke?

Mr. Philip: Of Quebec, as a matter of fact. And if you were a Socialist in Quebec, believe me, you had to know how to fight in those days.

I ask the members to seriously consider our amendment and not to vote along party lines.

Mr. MacQuarrie: Mr. Chairman, although Mr. Philip's suggested amendment has some superficial appeal, with all due respect, to the community groups and to AMO, with whom I have had some connection in the past, there is no useful purpose to be served by setting up in effect a separate investigative organization. We are in effect setting up a police department to police the police.

11:40 a.m.

The studies that have been carried out--Maloney, Morand, even the McDonald commission in its most recent report--have recommended that the police in the first instance carry out the investigations. The chief of police indicated during his presentation that the present police complaints bureau of Metropolitan Toronto had no hesitation whatsoever in dealing with matters of police misconduct and in carrying out very careful and very thorough investigations.

I think this would involve the introduction of an unnecessary element in the bill; it would serve to confuse the situation. And I feel that it would really be of no benefit to the process, to the efficiency with which the process operates and to the ultimate results. A lot of thought and consideration has gone into this aspect of it. The section as it stands in the draft bill really represents the best of current thought as to how the matter and matters can best be handled.

I concede that there might be some superficial appeal in having a separate investigative process but, from the information we have been able to obtain, it has never really successfully worked; and the police are quite capable of weeding out the bad apples who are in their particular group.

Therefore, Mr. Chairman, I would ask the committee members to defeat the proposed amendment.

Mr. Laughren: Mr. Chairman, I find the comments of Mr. MacQuarrie bland and superficial, elitist, defensive and even pig-headed. When I think that every single group that has most to be concerned about in the initial investigation of complaints has spoken out for an independent investigation, it's beyond me how this government can sit there and pretend that only they know what's best for the people out there in the community. Every single community group.

I was doing some reading over comments that other people had made, and there was an unlikely alliance between the civil liberties association and the police association, Mr. Syd Brown and Mr. Alan Borovoy. They made a joint presentation to Mr. MacBeth, the former Solicitor General, back in 1976. This is what they said--and these are people who understand what's at stake in the investigative process:

"Mr. Maloney and Mr. Justice Morand recommended the adoption of new complaint procedures. The central aspect of the recommended procedures, to use the words of Justice Morand, is 'independent investigation and review of police conduct.' The Metropolitan Toronto Police Association and the metro chapter of the Canadian Civil Liberties Association have joined forces here to urge the implementation of this recommendation. In the present system it is in-house review."

I think this is central to the whole argument that I make and that others out there have made too:

"So long as civilian complaints are handled entirely from within the police structure, neither the public nor the police will have sufficient confidence in the process."

I tried to ask Chief Ackroyd yesterday why the police themselves would not want to have completely removed from speculation the question of whether it really is independent and whether it really is completely and 100 per cent objective. I don't understand that.

I don't understand why the police wouldn't say, in their own self-interest, "Look, if there's going to be an investigation of the complaints, for heaven's sake let's remove any cloud over that investigation whatsoever." But no, they don't take that position. I understand that, I guess, because it is they who are being investigated. But if I were a policeman in Toronto I would want that to be completely independent.

So it's very easy to understand why all those community groups who came before us wanted it to be independent. Surely the committee members understand that there are concerns there. Yesterday we heard from Dr. Berger. He put his thoughts on the record. When you combine the people who are in the community groups themselves out there, broadly based community groups, when you hear the testimony of someone like Dr. Berger, when you think of the value of having a completely independent investigation in the initial stages, surely you must come to the conclusion, "Why not put it in place?"

What are you really going to destroy? You're not going to remove the operating efficiency of the Metropolitan Toronto police department. You're not taking away any authority from the police commission. You're not doing anything to the Solicitor General. All you're doing is removing any suspicion that an investigation is not completely independent.

I go back to the view of Mr. Brown and Mr. Borovoy five years ago. It's that initial in-house investigation that's forever

going to cast a cloud over the initial investigation unless you have it completely independent. But why do you want to have that there?

Do you not understand what's going to be said every single time in the future when there are investigations, particularly following debate on this bill and the presentations that have been made by delegations? Do you know what's going to be said? Every time there's an investigation those community groups are going to say, "We tried to tell you that you should make it completely independent from the beginning."

A lot of investigations will be under a cloud. And I don't know why we're doing that to ourselves and to the Metropolitan Toronto Police Force and to those community groups out there. Why do you want to set that up? That's what's going to happen. Ask yourselves that. Do you really not believe that when there is a contentious investigation--I'm not saying every one, but when there are contentious investigations--the charge will be made? And what is your comeback? What is your argument? What is your defence? "Well, the Legislature passed a bill in that form."

Well, true. The majority government Legislature can pass the bill in that form. But I'm telling you I think it's a tactical error on your part, not just a political error. I think it's wrong for the perception of justice in Ontario, and I think you are being unnecessarily stubborn by refusing to move on this amendment.

Mr. Williams: Mr. Chairman, after having heard Mr. Philip's comments about some of the members of the committee, and after having heard Mr. Laughren's comments about Mr. MacQuarrie's response as being bland, superficial and pig-headed, I can only suggest that perhaps flattery won't get you anywhere in this issue. I think we have to deal with it on its merits.

Interjections.

Mr. Williams: One thing that Mr. Laughren is quite right about is that this amendment before us, as put forward by Mr. Philip, is most certainly central to the whole issue, and that is whether we have that initial 30-day investigative period vested in the manner proposed by the present section 5 or whether we take that responsibility away from the chief of police and immediately vest it in this public complaints board, as is proposed in the amendment.

11:50 a.m.

While undoubtedly Mr. Philip is trying to convince himself that the community at large is totally and absolutely and resolutely opposed to this bill, lest he start to believe what he is saying--because he keeps reiterating it at every opportunity--I think we should point out that the record clearly demonstrates that some of the thoughtful organizations and groups that came before this committee, including the civil liberties organization, indicated they felt this bill was indeed a vast improvement over the status quo.



Mr. Philip: On a point of order, Mr. Chairman: That was not stated by the Canadian Civil Liberties Association. What they said was that they refused to answer at this time the question of whether this bill was better than nothing and that they would prefer to offer suggestions on how to improve the bill. That was as far as they went. Let the record show that.

If you check it out, and if Mr. Williams can show that the civil liberties association said that the bill in its present form was better than nothing, then let him show it in Hansard and I will apologize to him for having misunderstood what they said.

Mr. Williams: Mr. Chairman, I'll let Mr. Philip check out Hansard on his own time. I'm only stating what I heard in testimony, which Mr. Borovoy stated in response to questions from Mr. Mitchell, simply that this bill was certainly an improvement on the status quo and for that reason he would support it, though he had difficulties in accepting some of the structural aspects of the bill.

In any event, not only that organization but other organizations as well indicated that clear progress is going to be made in this issue by responding positively to the enactment of this legislation as presented rather than by taking a negative, hands-off approach to it and suggesting that co-operation not be given to ensure that this legislation will work in practice.

The only way it is going to work in practice is if indeed we do support this central issue, which is the structuring to give the chief of police the initial opportunity to investigate the matter on a short-term basis. I suggest that even that 30-day period may create some difficulties in timing.

Nevertheless, I believe we will have the full co-operation and assistance of the chief of police in assuming his responsibilities here that this section must prevail. I believe that the chief of police indicated yesterday that it was essential to maintaining the discipline within the force that this mechanism be fundamental to the whole concept of this legislation.

Clearly, Mr. Chairman, notwithstanding the pleadings of the members from the party who have introduced this amendment, I think it is clear that if the purport and intent of this legislation is to go forward section 5 must surely remain intact.

Mr. Elston: Mr. Chairman, as we've heard time and time again in the committee, the main contention around this whole piece of legislation revolves around the independent or nonindependent investigative procedures.

From the number of people who testified before us, I think it's quite clear that there is some concern. I think it can be noted, without making too contentious a statement, that there is at least some concern in the community, at least to the people who appeared in front of us to represent visible minority groups and various minority groups, that perhaps the investigative procedure is a vital instrument in dealing with the complaints being lodged against the police.

I don't think there is any question that this piece of legislation is being set up because there is a need to change the present system of dealing with complaints in Metro Toronto. I think that's acknowledged by all. The idea of having a pilot project is also a good idea to see if the changes that are being considered by this committee, when they are ultimately determined, will be evaluated and processed so that we know for sure whether the process will work.

It is incumbent upon the people who are reviewing the material that has been put before us to try to set up a pilot project whereby the individuals for whom the changes in the bill were initially proposed will see this new procedure as a genuine attempt to deal with the concerns they have voiced, whether in indirect or informal consultations, in meetings with various individuals involved in setting up this particular piece of legislation, or whether they were raised in testimony before the committee.

I think that this is the central question to this whole piece of legislation and that we must give a great deal of attention to the submissions made by the various people who appeared in front of us and spoke out against the bill.

Although in Mr. Borovoy's return visit, if I can term it that, he indicated that this bill was a step forward in relation to the status quo, I must also suggest that Mr. Borovoy's position from the outset was that he preferred to have the independent investigative proceedings.

During the first four or five days of our committee sittings we heard from no one who deviated from that position and, although we had exhibits filed before us which did not have representations, I do not think anyone expressed a preference for the principle of the police investigating the police, which is enshrined in this particular piece of legislation.

We must give credence to the people who appeared before us. They are voicing the concerns of the various groups they represent, and they are concerned with the constituency in which they are involved in Metro Toronto.

I suggested, before, that I was somewhat disturbed by the length of time taken by various people in the community to try to discredit the people who appeared in front of us by indicating they were not representing valid points of view because they had been associated with certain political parties or aspirations. I think that is probably out of character for people who are dealing with pieces of legislation of this sort.

That is why I think particular attention should be placed upon the testimony of the people who came before us, particularly Mr. Borovoy, who was very helpful. I think it will be admitted by all in attendance here today that his submission was a very good submission and a very valuable piece of material for the legislators.

Mr. Borovoy has been seen to represent a large segment of

the population in Metropolitan Toronto. His organization has been seen to be a very worthwhile group of individuals; and if you go back to his original premise, we must lend credence to the submission he made, that people in Metropolitan Toronto would feel better served by an independent process because their fears would be alleviated in relation to the investigative process.

He has made several submissions that could help to deal with a program implemented by a bill which left section 5 intact, but I think it is better that we deal with the reasons why he recommends the removal of section 5 as it currently stands and supports something akin to the amendments put forward by the NDP. He speaks of things like public confidence. He speaks about things dealing with what he saw as double standards. His submission was built around instilling public confidence in the legislation by the extensive amendments which he proposed.

12 noon

I would have to suggest, Mr. Chairman, that those extensive amendments were to be reviewed by the police association, and that there was to be some kind of a report. I bring this up as an aside at this point. There was supposed to have been some reply on those submissions which I understand we have not as yet received.

I would like to move from the civil liberties position to the police association. Although Mr. McMurtry and myself may have disagreed slightly on what was actually said by the police association, it seemed to me they said that, if there were certain rights or safeguards built into the amended legislation, they would co-operate in the implementation of a system in which an independent investigative system was put in place.

I have seen this morning that the Solicitor General has taken the suggestion of Mr. Walter and has built in a couple of safeguards for the police, one of which concerns oral statements and their use outside the investigative process. I think if we are going to add to the safeguards for the individual police officers, we then must reflect on what Mr. Walter said in his testimony. He indicated that his association would co-operate with the independent investigative procedures.

I must turn as well to the Metropolitan Toronto Police Force, represented by Mr. Ackroyd, yesterday, when he said that he also would co-operate with an investigative procedure independent of his force. In fact, he said that, as a police officer, it was his duty to implement any legislation which was passed by the Legislature.

He indicated as well that he did not fear an investigative procedure launched by a group independent of the police force, a concern which was raised initially, I think, by the Solicitor General when he was making a couple of statements. One was his initial statement when we first came to consider this legislation. I think he mentioned something about the stubborn realities. He may have been quoting from one of the studies from which he had quoted a couple of times.



It seems, therefore, that one of the major concerns about implementing the amendment to section 5 for an independent investigative procedure has been acknowledged by the police association and the police force as not having very much merit. I speak particularly of the difficulty of getting a very good and thorough investigation launched by a group of individuals who are not themselves inside the police force.

That removes, in my mind, a very difficult concern, a very large concern which I had about the whole process. We have heard that there were some suggestions in other areas that a program of an independent investigative procedure failed because there was no co-operation. We have had indications about the merits of the abilities of our police force here in Metropolitan Toronto, about how different they are to the forces that were probably in place in Philadelphia and other areas in the United States, where it has been said, rightly or wrongly, that their independent systems have failed.

When it comes to the attention of all the committee members that the two segments of the police department, the association and the Metropolitan Toronto Police Force senior staff, if you want to look at them in that light, have said they would co-operate in dealing with an independent investigative proceeding if that were to be put in place, I think we must consider that as something that suggests to me--and goes a long way in alleviating my fears--a good reason for implementing a pilot project with that independent investigative procedure in place.

If they are willing to co-operate and if, as Chief Ackroyd said, he is not concerned with the quality of the investigation to be received from independent people, then there really is no reason we should hold back. There is no reason we should not attempt a pilot project to see if this will work in Metropolitan Toronto.

I am sure that it can work here because, as Mr. McMurtry has said many times, any project we implement for Metropolitan Toronto will be successful if there is co-operation, and that co-operation we have been assured we will have. Since we have been assured by various segments that we will have co-operation, I think we should try this independent review situation, find out in three years how it has worked and then make further improvements if they can be made at that particular time.

For those reasons, Mr. Chairman, I am in support of the amendment proposed by Mr. Philip. I will be voting in favour of it.

Mr. Williams: I just want to set the record straight, Mr. Chairman, on a point made by Mr. Elston at the beginning of his remarks. He conceded that Mr. Borovoy also stated on his return that this bill was an improvement over maintaining the status quo. I think he also said that, over and above his observation, there were no others who took that position. That is how I understood his remarks.

Mr. Elston: No. I said in the first three or four days that there were.

Mr. Williams: I clearly recall that not only was there Mr. Borovoy but also Mr. Alec Nillots, who was a witness on September 30, the Reverend Frerichs of the Metropolitan Toronto Committee on Race Relations and Policing, and, of course, Metro Chairman Paul Godfrey.

Mr. Elston: I was speaking more directly of Mr. Borovoy's presentation. I agree that there were others who admitted here in cross-examination that they thought it as a possible positive step. I meant only to restrict my remarks to Mr. Borovoy's presentations.

Mr. Mitchell: First off, Mr. Chairman, purely a personal observation of mine: When I found I was going to be sitting on a committee dealing with this bill, I had some difficulty with it, in that I find the requirement for a bill such as this really does not fit in with my idea of what this country represents.

Frankly, I have always believed strongly in law and order, and I have always believed that if you have done nothing wrong, you have nothing to fear. I should go on to say that I am prepared to support the bill, because it has come about at the request of citizens' groups; it has come about because of problems that have occurred in Metropolitan Toronto.

I realize some suggestions have been made over the past period of time, such as to return the control of the police department to the councils of the municipalities and take away the police commission; that is completely abhorrent to me.

It has also been stated by some witnesses here--in fact, supporting what has always been my view--that those members of what might be called an internal discipline committee within the police force, or whatever name they might have in other places, are looked on with some trepidation by the members of the force. Most members of those groups are really not considered policemen by their fellow officers. In some instances I have even heard that what they are engaged in is considered a--I do not want to use the word "witchhunt," but perhaps it might be looked upon as such.

To those police officers who are attached to such a group, there is nothing worse than a bad police officer. It is always their purpose to ascertain whether the officer under investigation is good or bad. To indicate that any investigation by an internal group within the police department would not be thorough, and would not have as their major concern to get rid of a possible problem area, would be wrong.

Mr. Philip: No one has indicated that.

Mr. Mitchell: As well, if we went to the other extreme and created strictly a private body to examine all complaints, I have a feeling we would be in some great difficulty; first, in arriving at a consensus as to who the members would be, and second and more important, we would in all probability be getting to the point where, "I see some kind of anarchistic move behind it."

I may be wrong. It is personal observation, but frankly I

feel this bill as it is before us is one that was designed to respond to a request by the people of Toronto and Metro council and I must support the bill with the amendments proposed by the Solicitor General.

12:10 p.m.

Mr. Piché: Mr. Chairman, it was mentioned earlier that there is a lot of concern for this bill. I agree. I think we are all concerned in this committee and I am sure the ministry of the Solicitor General is very concerned. I also believe the concern is in the area of police investigating themselves. I think that is the bill itself.

After three weeks here, I realize this bill was brought about because of the serious problem that seems to exist between the Metropolitan Toronto police and some of the minority groups. I realize after listening for the last three weeks that all minority groups, if not most of them, that appeared before our committee supported, of course, by others, are opposed to part of the bill. The ones who appeared supporting the minority groups which are opposed are the Defence Bar Association of Ontario, Canadian Civil Liberties Association, labour unions, the mayor of Toronto. In fact, in the last three weeks we heard a lot of people who were opposed. That is why we are concerned, because of the arguments that we have heard.

I am satisfied that there are some safeguards in this bill. I don't have to remind the committee that this is a pilot project. It is self-destructive within three years. It is a start in the right direction, certainly. I have a lot of respect for the ministry of the Solicitor General, as I know I speak for the whole committee and of course the minister. Also, this government took the responsibility to produce the bill. I think our responsibility then comes that we should at least give it a chance.

This bill has a protection valve connected to it and it is that if the police do not do the investigation that is acceptable, then the complaints commissioner can and will come in after a certain length of time and take over. There is protection here that can be acceptable, as far as I am concerned, to the satisfaction of the citizens of Metropolitan Toronto, the people we are representing here today in dealing with this bill. I believe we should support the bill and section 5, as it has been presented to us today.

Mr. Philip: Mr. Chairman, if I can just comment on Mr. Piché's--

Mr. Chairman: Very shortly, Mr. Philip.

Mr. Philip: It was remarked by one reporter that I sometimes looked as though I had just eaten a sour Tory. Much as I disagree with where Mr. Piché has come from, and I know he did struggle with it, I accept the conclusions he came to. I do not have that large an appetite; so I won't comment on his speech at the moment. I am sure he is sincere in what he said, and I accept that.



Mr. Chairman: Thank you, Mr. Philip.

Mr. Laughren: I assume there is not a rule of speaking once on a clause.

Mr. Chairman: Mr. Laughren, it is up to the committee as to how many times each speaker wants to speak on each amendment or section, but we will be here until Christmas on this bill if there is unlimited debate permitted.

Mr. Laughren: I won't be. I just wanted to make one comment. The opposition members and others, one measure of how strongly they feel about this part of the bill is that they are prepared to vote the whole thing down rather than live with this section. I think that is significant, that we would rather see no bill than one that gives the appearance of having independent investigation without independent investigation.

I wish the members of the committee had measured that sense a little more carefully and a little more thoughtfully. Think of the groups who came before us. A lot of them felt that strongly about it themselves. It is still not too late for members of the committee to change their minds.

Mr. Chairman: Thank you, Mr. Laughren. Am I correct that now ends those who wish to speak to Mr. Philip's amendment? Fine. Shall the amendment of Mr. Philip carry? All those in favour?

Mr. Williams: Recorded vote.

Mr. Chairman: Recorded vote. It is not necessary to repeat the amendment, is it? We are all aware of it.

Mr. Williams: There are printed copies in front of us.

Mr. Chairman: Fine. Thank you.

Mr. Hennessy: Mr. Chairman, you should repeat the amendment, because then you know what you are voting on and it is stated there what (inaudible).

Mr. Chairman: Are we taking them together, Mr. Philip?

Mr. Philip: Yes. They are interconnected; so I do not mind if the vote is taken together.

Mr. Chairman: Section 5(1) is proposed to be deleted and in place thereof the following would be substituted: "The public complaints board shall establish and maintain for the purposes of this Act an investigative branch to be known as the public complaints board complaints investigation bureau."

Section 5(2) would be amended to delete the words "the chief of police" and replace them with the words "the public complaints board."

The committee divided on Mr. Philip's amendments to section 5, which were negatived on the following vote:

Ayes

Elston, Laughren, Philip.

Nays

Gordon, Hennessy, MacQuarrie, Mitchell, Piché, Williams.

Mr. Chairman: Mr. MacQuarrie moves that section 5 carry as it appears in the draft bill. Does anyone have any further comments, questions or amendments with regard to section 5?

Mr. Philip: We have a recorded vote--the same vote, Mr. Chairman.

Mr. Chairman: Yes. It will be recorded as such.

Section 5 agreed to.

Sections 6 and 7, inclusive, agreed to.

On section 8:

Mr. MacQuarrie: I move that section 8 be amended by adding thereto the following subsections: (4)--

Mr. Philip: On a point of order, Mr. Chairman: We do not have those amendments before us, unless I have somehow misplaced them. The normal protocol and courtesy is to supply the members of the committee with an amendment.

Mr. Chairman: Thank you. Since we are within seven or eight minutes of adjournment, shall we adjourn until two o'clock, by which time we will have these amendments in front of us?

Mr. Williams: (inaudible) all parties and caucuses have their amendments available for all members.

Mr. Philip: All of ours were tabled with the clerk and they were supplied to you. We even had photocopies made at NDP expense for all members.

Mr. Chairman: Thank you. We are adjourned until two o'clock.

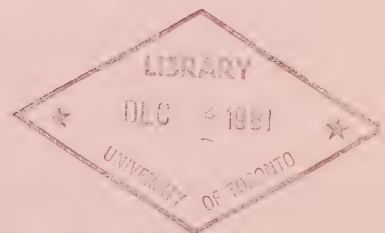
The committee recessed at 12:19 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
WEDNESDAY, OCTOBER 7, 1981  
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Andrewes  
Shymko, Y. (High Park-Swansea PC) for Mr. Mitchell

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister  
Ritchie, J. M., Director, Legal Branch

From the Ministry of the Attorney General:

Anderson, W. R., Registrar of Regulations

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 7, 1981

The committee resumed at 2:18 p.m. in committee room No. 1

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Toronto Police Force.

Mr. Chairman: We have a quorum. We had better start before we lose what quorum we have.

We left off at section 8, to await Mr. MacQuarrie having the copies of the amendments in front of us. You now have these.

On section 8:

Mr. MacQuarrie: Yes, Mr. Chairman, as was pointed out this morning, we are proposing a revision in section 8 along the lines suggested by Mr. Borovoy, and I move that section 8 of the bill be amended by adding thereto the following subsections:

(4) A complaint may be resolved informally by the person in charge of the bureau in accordance with procedures in this section at any time during the course of or after an investigation under section 9.

Mr. Chairman: Excuse me, Mr. MacQuarrie. If you are adding a subsection 4 and subsection 5, I already see a sub 4 there.

Mr. MacQuarrie: If you will wait until I conclude, Mr. Chairman.

Mr. Chairman: I am sorry.

Mr. MacQuarrie: (5) A complaint may be resolved informally by the public complaints commissioner in accordance with the procedures in this section at any time during the course of or after a review under section 15.

I further move that subsection 8(4) be renumbered as subsection 8(6).

Mr. Philip: May I ask Mr. MacQuarrie why he is moving this, and what is the intent of it?

Mr. MacQuarrie: The intent of this amendment is to allow the complaint to be resolved informally at any time during the course of the investigation or after it.



You will recall that Mr. Borovoy in his comments indicated that it would appear that the prospect of informal settlement of complaints was lost at a fairly early stage in the proceedings.

Mr. Laughren: Under section 8(4), maybe I have missed something here, but I do not understand whether that is replacing the existing subsection 4?

Mr. Chairman: I also was confused. I do take issue, I am sorry, with the draftsmanship of it. I do believe that when one is replacing a subsection, one should remove the old and then replace the new.

Mr. Laughren: This follows subsections 3, 4 and 5.

Mr. Chairman: Yes, but then read the end. You have to read the entire thing. I quite agree with you, Mr. Laughren. There is a new 4, a new 5, and the old 4 is put in as a 6.

2:20 p.m.

Mr. Williams: That motion should be amended accordingly, Mr. Chairman.

Mr. Breithaupt: It is probably quite clear what was intended, Mr. Chairman, but I think it would be better that 4 be renumbered as 6 and that there be a new 4 and 5. That is a better way of summing it up.

Mr. Chairman: Yes.

Mr. Laughren: Only the person in charge of the bureau can make that decision?

Mr. MacQuarrie: No, it can be resolved under subsection 4 by the person in charge of the police complaints bureau or by the public complaints commissioner, if he is in it at that stage.

Mr. Hilton: If I may say so, Mr. Chairman, the person in charge of the bureau need not personally do it. His agent, his staff, may.

Mr. Breithaupt: He no doubt would have the ultimate responsibility of some signature block on the form which would show his acquiescence in the procedure that has been taken, and his recognition that there has been a resolution. Would that not be the case?

Mr. Hilton: That is right, Mr. Breithaupt.

Mr. Philip: I guess my problem--maybe it is just because of having looked at it for the first time--is I don't quite see what it is adding to this bill. Subsections 1 and 2 would seem to give them that power without this. Am I missing something?

Mr. MacQuarrie: No, no. If you look at 9, it goes on to say that where a complaint is not resolved informally the person in charge of the bureau causes an investigation to be carried out.

What this amendment permits is that even though an investigation is in progress or has been carried out, the complaint can still be settled informally.

Mr. Philip: So at that time the formal investigation would be dropped. Is that the intent?

Mr. MacQuarrie: Presumably, to my mind it would be dropped.

Mr. Hilton: Mr. Borovoy, as I recall his comments, stated that it was unclear when you read 1, "The person in charge of the bureau shall consider whether a complaint can be resolved informally and, with the consent of the person making the complaint and the police officer concerned, may attempt to so resolve the complaint." That doesn't state where or when in the process, and he asked for the clarification.

We think it is well taken and have submitted that really in truth it can be done at any time through the whole proceedings.

Mr. Philip: I have no problems with that.

Motion agreed to.

Section 8, as amended, agreed to.

On section 9:

Mr. Elston: Mr. Chairman, I move that section 9(1) be deleted and the following substituted therefor, in conformity with my statement made earlier: "Where a complaint is not resolved informally, before investigation is undertaken, the public complaints commissioner shall cause an investigation to be performed forthwith by the public complaints investigation bureau or by his investigative personnel in accordance with prescribed procedures."

Mr. Chairman: Would you clarify the reference?

Mr. Elston: Okay. The suggestion made in my remarks earlier in the morning was that the public complaints commissioner should have an ability to decide, along certain lines, where the best investigative results would be turned up. This is one way. We think if he is involved to make that decision initially, he can get in there early and take a potentially serious problem and deal with it impartially and potentially diffuse any difficulties that may arise early in the proceedings rather than waiting too long.

This will also make the office of the public complaints commissioner viewed as truly independent and would give the public confidence that he is operating under his own volition and not under some form pressure or difficulty.

Mr. Chairman: Gentlemen, for just a moment, before we lose sight of it, this is a question the chair is asking. In the light of section 8 being amended, and since the amendments refer to section 9, I ask the committee counsel if section 9 need not

nave some reference or some amendment to it. You are putting a before and after in section 8. You are referring to section 9. Does section 9 not need some recognition of the changes to section 8? I just leave that with you.

Mr. Ritchie: I do not believe so, Mr. Chairman, because the opening words of section 9 are, "Where a complaint is not resolved informally," then an investigation is to take place. Therefore, if a complaint is resolved informally, at whatever stage, that clearly obviates the necessity for an investigation or a further investigation.

Mr. Chairman: Does it make automatic the cessation of any investigation that is then in progress?

Mr. Ritchie: That is the only logical reading of the provisions. If the complaint is resolved, it is resolved.

Mr. Chairman: Fine. Thank you. Mr. MacQuarrie.

Mr. MacQuarrie: Mr. Chairman, with respect to the proposed amendment, we have already dealt with it carefully in our review of section 5.

What it presupposes is the existence of a public complaints investigation bureau. As the members of the committee know, the public complaints commissioner is entitled to monitor every complaint from the date on which it is lodged and in unusual circumstances, or where he suspects there is delay, he can intervene and cause his own investigation to be carried out. I feel this proposed amendment is redundant in the circumstances and I would ask the committee to defeat it.

Mr. Philip: Mr. Chairman, I am going to speak to only one member in this committee because I know he is not quite as reactionary as the other members and I know if I can get a tied vote on this that you, sir, are a man of such honesty and integrity that you will no doubt vote for. I am saying to you, Mr. Piché, that--

Mr. Piché: I have got it made.

Mr. Philip: I am also saying to the member for High Park-Swansea (Mr. Snycko), because he understands minority groups, or at least he represents them anyway, that every group that has come before us has asked for an independence of investigation.

In spite of the fact that the Association of Municipalities of Ontario wanted that, in spite of the fact that every community group wanted that, in spite of the fact that all the minority groups that came before us asked for that, the government, with its large majority and the lesson of March 19, came down heavily against us and against the people.

2:30 p.m.

I know that Mr. Piché is a man of the people and he understands this kind of thing; I don't expect Mr. Williams to



understand this. But I think you can understand it, and I think, sir, that you really did struggle with this and you almost voted with us on section 5. If the Liberals had been here and you thought we could have won, you might have even come over to us then. But now you have an opportunity to redeem yourself. I suggest that you can redeem yourself, and even collect on that meal that I offered you, if you vote with us at the present time.

Mr. Piché: Trying to buy me, eh?

Mr. Laughren: I would like to address my remarks to Mr. Williams. I think that beneath that exterior there lacks--

Mr. Gordon: Lurk. Lurks!

Mr. Laughren: Lacks? Sorry. There lurks, perhaps even seethes, a democrat--a small-d democrat.

Interjection.

Mr. Laughren: Yes. A human being trying to get out.

Mr. Chairman: Mr. Williams is next in order.

Mr. Laughren: No, seriously, Mr. Chairman, I was looking at section 7 and the amendment on section 9 as put by Mr. Elston. I think Mr. MacQuarrie should put out of his mind section 5 and deal with the amended section 9 as following upon section 7, not as following upon section 5--put the amendment in perspective that way.

As even he should agree, there is nothing wrong with the amendment, in that it says that if a complaint is not resolved informally there is no reason why the public complaints commissioner should not be able to cause an investigation to take place by his or her personnel.

You have said all along that the public complaints commissioner should be able to initiate investigations. I don't see why this conflicts with--

Mr. MacQuarrie: I have said all along that in certain circumstances it can. The other thing is, in dealing with section 5 and my reference to section 5, the committee will recall that that was the section in which we first saw an indication of a public complaints investigation bureau, if I am using Mr. Philip's words correctly from his resolution.

I think the two sections tie logically together, the proposed amendment by Mr. Philip and the proposed amendment by Mr. Elston.

Mr. Laughren: Don't you agree that in section 7, where you have the complaint received and the person who is in charge of the bureau--don't forget it is the police bureau here, right?

Mr. MacQuarrie: That is right.

Mr. Laughren: It's the person in charge of the police complaints bureau, and not the complaints commission, who would inform the police officer--right?

Mr. MacQuarrie: That's right.

Mr. Laughren: Unless there are reasons not to. Then why are you objecting? It has already been through the police complaints officer--

Interjection: No, it hasn't.

Mr. Laughren: Sure it has. On receipt of it, the person in charge of the bureau--it has already been to the police bureau; right?

Mr. MacQuarrie: No.

Mr. Elston: Not necessarily. It may have, it may not.

Mr. Laughren: You are splitting hairs.

Mr. Hilton: It's the essence of the amendment, sir.

Mr. Laughren: You are not convinced, eh? I think you could accept that amendment and it would not give you the same thing in the bill which our amendment to section 5 would.

Mr. MacQuarrie: Here again we have the introduction of a second investigative body either before the time prescribed by the act has elapsed or in the absence of unusual or exceptional circumstances.

Mr. Laughren: We would be prepared to accept an amendment.

Mr. MacQuarrie: This is something that I think is certainly contrary to the views that were taken when the legislation was drafted in the light of the best evidence and best opinions available to those preparing the legislation.

Mr. Laughren: Which section do you want to amend to make sure it doesn't conflict?

Mr. MacQuarrie: Where do you see a possible conflict?

Mr. Laughren: I don't; that is the thing. I don't see where your--

Mr. MacQuarrie: I am drawing a parallel; I am not necessarily saying they are in conflict. What I am saying is here again we are trying to introduce a public complaints investigation bureau when there is no demonstrated need at this point in time for such a bureau to be introduced.

Mr. Williams: Mr. Chairman, I am just amazed to watch the wizardry of Mr. Laughren to be able, with a straight face, to

try to convince the committee that he pretended not to understand the full import of this amendment.

I think it is quite clear to the committee that what the NDP caucus was trying to accomplish through the front door, the Liberal caucus is endeavouring to accomplish through the back door; that is, to tear away the basic tenets of this legislation--

Mr. Elston: On a point of order, Mr. Chairman.

Mr. Chairman: Mr. Williams, Mr. Elston has a point of order.

Mr. Elston: For Mr. Williams's information, we are not attempting to eliminate the police investigation; in fact, a police investigation can be conducted fully. This amendment is only designed to give the PCC the independence which we feel he must have and be seen to have by the community. I do not think he should be suggesting that we are trying to somehow indirectly do what the folks behind us here (inaudible).

Mr. Williams: If I might continue, Mr. Chairman--

Interjections.

Mr. Chairman: Order. Mr. Williams has the floor.

Mr. Williams: My observation, with respect, is not without substance in that what they are endeavouring to do, when I say coming through the back door, is to relieve the chief of police of that responsibility in the first instance and have the PCC be the individual who would conduct that initial investigative procedure.

As I say, and as I was saying when I was interrupted, that would basically tear away the very heart of the legislation and deprive the police of the 30-day opportunity to carry out the initial investigation. For that reason, this amendment is not dissimilar to that of the one put forward under section 5 by Mr. Philip and therefore could not be supported in good conscience if we are to continue supporting the basic tenets of this legislation.

Mr. Elston: I just want to repeat, Mr. Chairman, that this doesn't tear away the heart of the legislation; it does not purport to destroy the ability of the police to investigate themselves.

As you know, all this amendment is designed to do is give the PCC an opportunity of dealing with questions of where the matter might be best dealt with. If he decides that it can be dealt with best by the police, then it will be. That does not preclude the matter being informally resolved, because there is every opportunity for having this matter informally resolved by the police and the complainant prior to this step ever being reached.

I am not in any way trying to substitute the PCC for the police chief, and I do not think that has ever been the intention



of anyone who has supported an independent investigation by people outside the police force or whether they have been doing anything else.

I somehow have gathered that the police chief feels that any sort of independent investigative proceeding is in effect a shot taken at him and his ability. I want to assure the members of the committee that that is not the case. There has never been any indication that the people in Metropolitan Toronto want to take away the authority of the police chief to deal with his force the way that he feels he should.

2:40 p.m.

I just want to point out the only thing we are interested in doing by placing this amendment in front of the committee is to ensure that there is an independence allowed to the PCC which in effect will provide the community at large, and for all we know from the information that we got before the community at large would be better served by having this independence being shown. That does not prevent the PCC from deciding that the matter might best be handled inside the police force, but he can decide that he would like to get the investigation launched.

Mr. MacQuarrie: The amendment, unfortunately, does not state that. It is quite explicit. It says that "he shall cause an investigation..."

Mr. Elston: Yes, "he shall cause." And he can determine where it is going to be launched.

Mr. MacQuarrie: What you run into there is a prospect of a parallel investigation in situations where parallel investigations are not warranted.

Mr. Elston: How do we know?

Mr. MacQuarrie: The option is given later on in the bill for the public complaints commissioner to get into the act, so to speak, at an earlier time when he feels that an investigation is warranted.

Mr. Chairman: Are there any other comments with regard to this amendment?

Shall the amendment of Mr. Elston carry?

Interjection: A recorded vote, Mr. Chairman.

Mr. Chairman: Recorded throughout?

Mr. Williams: He has a right to ask for it and to have it done.

The committee divided on Mr. Elston's motion, which was negated on the following vote:

## Ayes

Mr. Breithaupt; Mr. Elston; Mr. Laughren; Mr. Philip.

## Nays

Mr. Gordon; Mr. Hennessy; Mr. MacQuarrie; Mr. Piché; Mr. Shymko; Mr. Williams.

Ayes, 4; nays, 6.

Mr. Philip: Mr. Chairman, I just wanted to admit that Mr. Elston's amendment would have done exactly what Mr. Williams said it did, but it is unfortunate that that side caught on to what we were doing.

Sections 9(1) and 9(2) agreed to.

On section 9(3):

Mr. Elston: I have an amendment to propose there, Mr. Chairman. I move that section 9(3) be amended by adding the word "forthwith" after the word "shall" in line six of the proposed section.

Mr. Chairman: Is there any other comment?

Mr. MacQuarrie: I would agree with that amendment, Mr. Chairman.

Mr. Breithaupt: Perhaps we had better reconsider that; that calls for a short recess.

Mr. Chairman: Shall the amendment of Mr. Elston carry?

Motion agreed to.

Section 9(3), as amended, agreed to.

Section 9(4) and 9(5) agreed to.

Section 9, as amended, agreed to.

On section 10:

Mr. MacQuarrie: Mr. Chairman, I move that section 10(1) of the bill be amended by adding at the end thereof "but where the chief of police takes action under clause b, c or d, he shall not take action under any other of those clauses".

Mr. Philip: I would like to get clarification from legal counsel on that. Does that mean, then, that someone could be dealt with under clauses (b) and (c) and if subsequent information came out that criminal charges could not be laid?

Mr. Williams: Let him speak to his amendment. He might explain that.

Mr. MacQuarrie: This amendment is one of those being proceeded with on the advice of the president of the Metropolitan Toronto Police Association, who suggests that the section be clarified to prevent an officer from being subjected to both a police complaints board hearing and a disciplinary charge under the Police Act.

Mr. Breithaupt: What if the disciplinary matter leads to the finding of more serious information, then--

Mr. MacQuarrie: The act does not relate to any offences under the Criminal Code. The Criminal Code charges would be laid automatically and there is nothing that could prevent any--

Mr. Philip: But clause (a) clearly indicates that one of the courses of action he can take is if he finds there is criminal wrongdoing is refer it to the crown attorney. The crown attorney would automatically lay charges under the Criminal Code of Canada right away.

Mr. MacQuarrie: No. He may. The crown attorney may or may not, depending on how he assesses the evidence.

Mr. Philip: Assuming then that the investigation finds something to be of a criminal nature, my understanding was--and it has always been the defence of the Attorney General and Solicitor General--that if any wrongdoing turned out to be of a criminal nature this act automatically stops. He would come under the federal authority, therefore, and the duty would be for the crown to lay charges.

Mr. MacQuarrie: That is my impression.

Mr. Philip: Unless I am missing something then, this is what your amendment would do: If you start an investigation under (b), (c) and (d), and then later in the end-processes of your investigation--or even after you have dealt with it under your investigation--the information you have leads to further information that would lead to criminal charges, those criminal charges could not be laid after that.

Mr. MacQuarrie: You will notice that (a) has been specifically excluded from the proposed amendment. We are dealing with clauses (b), (c) and (d). Where they proceed under one of those clauses (b), (c) or (d), they cannot proceed under any other of those three.

Mr. Philip: I see. I missed that and I am sorry. You are right.

Mr. Breithaupt: Mr. Chairman, I think there might be a more clear way of putting this if this is the intention. I would suggest that in effect you include sub (a) under 10(1). Then it would read: "...and may, unless he decides no action is warranted, cause an information, alleging..." et cetera. And then as sub 2 in the alternative, the chief of police may do either of what would be (a), (b) or (c). I am sorry, it would be in addition--it would not be in the alternative.



It just seems to me where you tack on this kind of phrase after the word "warranted," it reads somewhat awkwardly. It is fine and I suppose it shows what is wanted, but--

Mr. Williams: It does not come after "warranted," it comes after the subclauses.

Mr. Chairman: I noticed that ambiguity at the very beginning and each of two solicitors here have differed as to what "at the foot or end thereof" means.

Mr. Breithaupt: I just presumed it would be--

Mr. Chairman: After "warranted," yes.

Mr. Breithaupt: I just presumed that.

Mr. Chairman: And Mr. Williams is assuming that it is down at the very end before sub 2.

2:50 p.m.

Mr. Williams: That is right. Any lawyer can understand that.

Mr. Chairman: I do not know that, Mr. Williams, because I see the ambiguity of that.

Mr. Philip: I will accept the chairman's legal ability over the vice-chairman's any day.

Mr. Laughren: He is not the chairman, he is the vice-chairman, you know.

Mr. Anderson: Mr. Chairman, with respect to your great knowledge of the law I think the way that thing is structured it can only be read that "at the end of subsection 10(1)" means flush with the whole subsection. I think it would be most unusual for anybody to suggest that "at the end of subsection 1" is the word "warranted". That is the way I thought it seemed to fit. However, if you prefer to leave that in the four parts, that certainly can be added with a comma and a slightly indented--

Mr. Anderson: When the bill is printed I think it will be eminently clear just what the whole subsection says.

Mr. Breithaupt: I would rather see it in effect as a separate clause somewhat more clearly set out from my way of reading things, but if that is what you want you have it.

Mr. MacQuarrie: I trust the layman will see what we are trying to accomplish. I trust that we are in general agreement with the amendment.

Mr. Laughren: Why have we been debating it for 15 minutes if it is so uncertain?

Mr. Williams: Section 10.

Mr. Laughren: Surely we are not just changing the bill to satisfy the crisp and trap-like minds of lawyers. The odd layperson will be reading this bill too. If there is a way to tidy it up why not do it?

Mr. Williams: I think Mr. Anderson, the registrar of regulations, certainly thought it did not create any difficulty at all. He has been dealing with legislation all the time.

Mr. MacQuarrie: I would move the amendment clause be carried.

Mr. Chairman: Is there any further discussion on Mr. MacQuarrie's amendment to section 10(1)?

Motion agreed to.

Mr. Philip: On section 10(1)(c), I move the following be added after the words "regulations thereon". "Provided that any officer required in such disciplinary proceedings to furnish reports and answer questions be given prior notice of the substance of the accusations against him and a reasonable opportunity for prior consultation with an agent or counsel."

Under any kind of inquiry to which a person is subjected, it is normal for him to be provided with an opportunity to prepare himself and to seek counsel. This is what this is attempting to do.

You may recall the Civil Liberties Association suggested that those recommendations they felt would make things more fair for the police should be incorporated into the bill. We recognize there may be changes necessary in the Police Act that would be complementary to this if this is passed. Of course we support the whole concept of an arbitration process but this bill is not the place to put that kind of thing in. So what we are doing is taking one small step that will make it fairer, we think, to the officer under the gun--the officer being questioned.

Mr. Hilton: Mr. Chairman, just so this may be understood am I in error, Mr. Philip, that there is just a grammatical slip here? That is, "prior notice of the substance of the accusations against him."

Mr. Philip: Yes, that is a typing mistake.

Mr. Hilton: It says "any officer", so that is singular.

Mr. Philip: That is correct.

Mr. Hilton: I just want to make that--

Mr. Philip: I read it as "him", but I am afraid it is printed as "them", so that is correct; "him" being used in the singular generic sense.

Mr. Hilton: Yes, with interpretation accents.

Mr. Williams: (Inaudible) deputy, is this mechanism not already in place under the Police Act? Does this type of information and notice have to be served on a police officer. I do not see that anything new is being added here, really, is it, that is not already available to the police?

Interjections.

Interjection: I thought notice has to be given under the Police Act.

Interjections.

Mr. Hilton: I am advised that if there is a hearing under the Police Act, the person has to be advised. But I am at a loss to know--

Mr. Philip: But this may not be defined as a hearing.

Mr. Hilton: Well, that is what I was wondering.

Mr. Philip: So all we are doing is to give him the same protection that he has under the Police Act.

Mr. MacQuarrie: On the proposed amendment, disciplinary proceedings under the Police Act have been in force and operating quite successfully for many years. Some departments, by standing order and otherwise, deal with aspects of discipline. The Police Act has been the basis of disciplinary proceedings, establishing minor and major offences, and the nature of the hearings (inaudible).

There have been no criticisms, to my mind, from either the police departments that were involved or the chief of the department or the governing authorities with respect to this provision, and I think we would be ill-advised to tamper with it.

Mr. Hilton: Mr. Chairman, I am advised by Mr. Ritchie, the counsel, that under the Statutory Powers Procedure Act that notice would have to be given in any event, and so it is unnecessary and it is redundant.

Mr. Philip: Therefore there is nothing wrong with spelling it out in the bill to make it clearer--to the police officers and anyone else reading it.

Mr. Hilton: There have been disciplinary proceedings going on for a long time, and the problem has never been raised. So they must all know--

I just think it is redundant and unnecessary.

Mr. MacQuarrie: Our opinion is that there is no need for it, and excess verbiage in any legislation tends to make it--

Mr. Philip: Oh, my goodness.

Interjections.



Mr. MacQuarrie: So I would recommend strongly that this amendment be defeated.

Mr. Chairman: Are other people speaking to Mr. Philip's amendment?

Mr. Philip: This is an amendment which is clearly in the interests of the police, and I hope that nobody is going to bash our fine officers by voting against my amendment.

Interjections.

Mr. Laughren: Mr. Chairman, I do think that with this new procedure, it is a real question that the police officers of Toronto--and elsewhere, if it is ever used elsewhere--will be reading this bill. It costs nothing to add those words to amend the section that way, and it will assure the officers of just what their rights are. As a matter of fact, any legal counsel they might have who is reading it would be assured as well. Therefore I do not see any reason at all why you would not want to put that in there, simply to reassure the officer who might be reading it, or to make it clear to counsel that is indeed a right under this new legislation.

3 p.m.

I understand the concern about adding something that is just redundant or that just adds words--none of us wants that--but if it does more than just add words and provides reassurance to the police officer, then it really isn't just verbiage, as Mr. MacQuarrie put it, it really does accomplish something.

Mr. MacQuarrie: You will find, Mr. Laughren, in talking with individual police officers or officers of their association--

Mr. Laughren: It is a new bill.

Mr. MacQuarrie: --that they are perfectly aware of their rights.

Mr. Laughren: This is a new bill.

Mr. MacQuarrie: But this aspect of the bill deals with an act under which police forces have been operating in Ontario for many, many years, and they are fully familiar with their rights and obligations under that act.

Mr. Laughren: Are you suggesting that when a police officer reads this bill, he then should go back and have to read the Police Act, as well, in order to reassure himself? Why put them through that?

Mr. MacQuarrie: At this time I would venture to say that every police officer in Ontario is extremely familiar with the Police Act.

Mr. Laughren: Yes, but when they read this, are they all

going to be so much up on the law that they will understand that the Police Act is complementary to this?

Mr. MacQuarrie: I would say so, yes.

Mr. Laughren: That is an heroic assumption.

Mr. MacQuarrie: I think my presumption is correct.

Mr. Chairman: Are there any further comments on the amendment by Mr. Philip?

The committee divided on Mr. Philip's amendment to section 10, which was negatived on the following vote:

Ayes

Breithaupt, Elston, Laughren, Philip.

Nays

Mr. Gordon, Mr. Hennessy, Mr. MacQuarrie, Mr. Piché, Mr. Shymko, Mr. Williams.

Ayes 4; nays 6.

Section 10(1), as amended, agreed to.

Mr. Philip: Mr. Chairman, you may recall that Mr. Batchelor made a number of proposals for amendments on this bill, and we had asked that we be provided with a legal opinion on each of them because they were all very technical. We now have the legal opinion that has just come in. I admit that perhaps we should not have proceeded with the bill until we had done this, but nonetheless, we do have them in front of us now. I am wondering, is there any way in which--

Mr. Breithaupt: I don't have one in front of me.

Interjections.

Mr. Chairman: Something is being photocopied right now, Mr. Philip.

Mr. Philip: I gather it is being photocopied right now. A copy was--

Interjections.

Mr. Chairman: Mr. Philip, you have the floor. With regard to what section--

Mr. Philip: They are dealing with subsections 9 and 5 of page 17. What is that? Oh, that is his brief, I am sorry. It is not by sections in the bill.

Mr. Breithaupt: Perhaps we should wait until we receive our copies, Mr. Chairman.

Mr. Chairman: We had the general understanding that we will go back if there is a subsequent amendment that reflects back on a previous section.

Mr. Philip: Okay, as long as we have that understanding then because I gather it has just been filed with the clerk and a copy given to me. I haven't had a chance to--

Mr. MacQuarrie: A member of the privileged class.

Mr. Laughren: I am glad you recognize the existence of the class system.

Mr. Chairman: This is getting us nowhere, and it is taking us on extra time.

They are here now. Shall we deal with these amendments at this point?

Mr. MacQuarrie: Mr. Chairman, that was just an opinion on a brief and a number of suggestions made in the brief.

Mr. Philip: It is a legal interpretation. The minister has already said that he will accept one of the amendments and it is the legal opinion from the ministry. We did agree when the gentleman was present that rather than deal with each of his amendments then, which would have taken us probably a couple of days to go through them with legal counsel, that we could bring back a legal opinion on it, and it is only fair that having made that commitment to Mr. Batchelor, that we deal with them. Otherwise we are being most discourteous to a gentleman who has put a lot of time in on this--.

Mr. MacQuarrie: It certainly is and his comments and his brief were taken into account in terms of amendments proposed by the ministry.

Mr. Williams: The opinion of the ministry does not change on any of these proposals up to the section we are presently on.

Mr. Breithaupt: Mr. Chairman, perhaps we could take a few moments before we move on just to review the contents of these various points. If there are no changes suggested or anything else comes to mind, then we will have dealt with the matter, and we can use it on the various sections as they come forward. That way, I think we would save some time and have the benefit of this document which, of course, we have only just received.

Mr. Williams: A quick view of it would indicate that the position of the ministry does not change on the sections that he has made comment on up to the section we are on now. By all means, let us discuss them as we go along.

Mr. Chairman: Shall we adjourn for two minutes so that we, each in our own silence, without trying to listen to three different things, see where we are? Mr. Williams has stated that, but there are two phrases or more dealing with section 9 and



prior. I know, I, for one, cannot do it listening to two people at once.

Mr. Philip: Perhaps an easier way of dealing with it would be to simply ask legal counsel when we come to a section that Mr. Batchelor has dealt with, to point it out to us in his response to Mr. Batchelor and we can deal with that section and that response at that time. That does not hold up the proceedings at all. We will deal with it then by the section, and I am sure that--

Mr. Chairman: Fine. Instead of adjourning, shall we just read for a couple of minutes?

3:10 p.m.

Mr. Chairman: Gentlemen, can we recommence? After all of us having had an opportunity to examine the legal opinion of the Ministry of the Solicitor General upon Mr. Batchelor's brief, perhaps the draftsman, Mr. Ritchie, could expand on the answers here.

Mr. Ritchie: Thank you, Mr. Chairman. I can sum up my opinion on the drafting points contained in Mr. Batchelor's brief very simply by saying that I did not accept any of them as being improvements in the bill. This is the opinion I gave; none of the drafting points would lead to improvement of the bill.

I specifically declined to comment on any of the policy items. As you are aware, the minister this morning indicated he would be proposing two amendments based on suggestions from Mr. Batchelor, but in my opinion I avoided that type of policy issue and left it on a strictly legal basis.

Mr. Philip: Can you tell us the policy areas that the minister agrees with?

Mr. Ritchie: Yes, under section 11--If you have a copy of the minister's brief, on page four: "Section 11 would be amended at the suggestion of Mr. Batchelor, to require the chief to give reasons for his decision in disciplinary hearings."

And 14(3)(c): "A clause that allows an early investigation by the public complaints commissioner in special cases has been criticized as being vague and unclear. We propose to clarify along the lines suggested by Mr. Batchelor. The amendment would authorize intervention"--the words were a little different in the copy that he read this morning but were to the effect---"by the public complaints bureau where there is apparent undue delay in the investigation or otherwise conducting it improperly."

Those are two amendments that will be brought forward, I believe, by the government.

Mr. Philip: Thank you. Mr. Batchelor seems to have made an impact, more than our amendments have, on the government and on the Conservative Party. I hope he is not planning on running

against me in the next election, as he seems to have more influence than I do.

Section 10(2) agreed to.

Mr. Chairman: On subsection 3, I believe there are amendments and, gentlemen, would you take a moment to examine this before Mr. MacQuarrie starts?

Mr. MacQuarrie: Mr. Chairman, the amendment I am about to propose was suggested by Mr. Borovoy during his presentation. In effect, it requires the chief to give reasons where he decides just to counsel or caution a police officer involved in a complaint.

I move that section 10(3) of the bill be struck out and the following substituted therefor:

(3) The chief of police shall give forthwith written notice of any action taken by him under subsection 1 or of his decision that no action is warranted to the public complaints commissioner, the person who made the complaint and the police officer concerned and, where his decision is that no action is warranted or he has taken action under clause 1(d), the chief of police shall give his reasons therefor.

Mr. Laughren: Without even consulting my colleague from Etobicoke, I think I can say we support this amendment because, if you recall, there was concern that action might be taken but it might be of such a nature that it would still defy credibility without any reasons given for the action. I think that is a good amendment and we should support it.

Mr. Breithaupt: We would presume, I suppose, that the results of that written statement under 1(d) would then appear in the personal file of the constable, is that the expected result?

Mr. Chairman: Mr. Breithaupt, before you addressing a question to me and before I answer your question or attempt to, I would like Mr. MacQuarrie to explain to me what clause 1(d) he is referring to?

Mr. MacQuarrie: It is section 10(1)(d).

3:20 p.m.

Mr. Breithaupt: I asked a question about the intention as to this item appearing in the personal file. Is that what we are trying to accomplish, to make sure that the oral resolution is going to have, in effect, some record of it? Is that the intention?

Mr. MacQuarrie: Mr. Ritchie might be able to answer that.

Mr. Ritchie: Mr. Chairman, the point made by Mr. Borovoy was that the chief of police might choose to counsel the officer rather than commence a disciplinary proceeding against him. Mr. Borovoy felt that where the chief decided this lesser approach was warranted he should have to give his reasons and, of course, these

l a n s

The only addition we have made here is to require the chief to give reasons where he decided that it was appropriate only to counsel the police officer.

Mr. Breithaupt: I see. It would become then, in effect, a resolution by going on these various parts but would not be a matter of any record on a personal file, although there obviously would be a record because the public complaints commissioner would be keeping a survey of individuals who have at least been involved in events, however they may have been resolved.

Mr. Ritchie: Yes.

Mr. Hilton: Mr. Breithaupt, if I may also say, it saves any allegations that the chief, under a similar factual situation, gave a heavier penalty to somebody else.

Mr. Breithaupt: Favoured one?

Mr. Hilton: Favoured one as against the other. This assures that all the reasons are set out there for all who are interested in future proceedings. I don't know that we are bound by stare decisis in this sort of circumstance, but it well may be that it is advisable for somebody to look at what has gone before to see that equity is being exercised.

Mr. Breithaupt: It could form a certain part of the annual report of the commissioner as he overviews whether people are being dealt with equally.

Mr. Hilton: Equitably, yes.

Section 10(3) agreed to.

Section 10, as amended, agreed to.

On section 11:

Mr. MacQuarrie: I have a proposed amendment to section 11(2), so we could deal with 11(1).

Mr. Breithaupt: The only question I would ask, Mr. Chairman, with respect to any subsequent sections is, are we certain that the references to section 19 and the five parts are the accurate ones that we want, or do any of the Solicitor General's amendments refer to those in due course? I have not looked, I must confess.

Mr. Ritchie: Mr. Chairman, we have been careful on the point. No amendments are required to section 11(1) as a result of any other amendment that we will be proposing.

Section 11(1) agreed to.

On section 11(2):

Mr. MacQuarrie: Mr. Chairman, I propose to introduce an amendment which reflects a suggestion made by Mr. Batchelor which



will require the chief to give reasons for his decision on a disciplinary hearing.

I move that subsection 11(2) of the bill be struck out and the following substituted therefor:

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection 1, the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the public complaints commissioner, the person who made the complaint and the police officer concerned.

Motion agreed to.

Section 11(2), as amended, agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13, inclusive, agreed to.

On section 14:

Mr. MacQuarrie: I have an amendment to section 14(1).

On section 14(1):

Mr. Breithaupt: Our amendment is really included in the amendment that Mr. MacQuarrie is proposing. We are pleased to see it has been accepted and I think it will set a better tone in this.

Mr. MacQuarrie: Mr. Chairman, the amendment that I propose is an alteration in section 14(1)(c) to make it mandatory for the public complaints commissioner to review the record of an informal resolution of a complaint by the police complaints bureau.

I move that clause 14(1)(c) of the bill be struck out and the following substituted therefor:

(c) shall review the record of the informal resolution of a complaint by the person in charge of the bureau and may request that the person in charge of the bureau cause an investigation or further investigation, as the case may be, to be made into the complaint.

Mr. Philip: Am I to understand this is the third rewriting of this section? As I recall, the words "or other exceptional circumstances" were not included in the previous bill; those were added. Oh, I am sorry. That is a different part.

Mr. Breithaupt: We will, of course, withdraw our amendment to section 14(1)(c), Mr. Chairman.

Section 14(1), as amended, agreed to.

Section 14(2) agreed to.

Mr. Philip: I have an amendment on section 14(3).

Mr. MacQuarrie: I have an amendment as well.

Mr. Chairman: Mr. Philip's amendment was in first.

Mr. Philip: I move that section 14(3)(b) be amended to read: "Upon the request of the chief of police or upon the request of the complainant."

3:30 p.m.

Mr. Chairman: Mr. Philip, in your printed matters--unless it is out of order--as far as I can see, your next amendment is section 14(3)(c); I don't see a 14(3)(b).

Mr. Philip: Section 14(3)(b) is there.

Interjection.

Mr. Laughren: Oh God, don't confuse ours with the Liberal amendments.

Mr. Chairman: Sorry. That's correct.

Mr. Philip: Mr. Chairman, the intent of the amendment is fairly clear. What we want is the request of the complainant to be added to this so that it can be initiated on his request as well.

Mr. Chairman: Are there any further comments? Mr. Laughren.

Mr. Laughren: I think this is a very (inaudible) amendment because, whether the members of the committee want to admit it or not, there will be complainants who will have fears about the police investigation of their complaints. We shouldn't kid ourselves that way. This allows the complainant who has that concern and that fear to go and ask the public complaints commissioner to investigate the allegations.

The members of the committee should regard it as a safety valve, which is the expression somebody else used earlier this morning. It is not at all unreasonable. It does not contradict any other part of the bill. It does not undermine the police force or anything else. It is a most reasonable amendment, and I would urge not just Mr. Piché to support it, but other members of the committee too.

Mr. MacQuarrie: Mr. Chairman, on careful reading of subsection 3 of section 14, particularly the introductory phrases, it is implicit that the further investigation and inquiry is being carried out at the request of the complainant or at the instance of the commissioner.

Mr. Philip: But only under certain circumstances where reasonable grounds as defined in (c) and upon the request of the chief of police. All we are asking for is that it also be on the request of the complainant.

Mr. Breithaupt: Perhaps it could be explained, Mr.

Chairman, as to why it is not a good idea to spell this out. It seems to me that it does nothing but improve the situation. Is there a reason why we shouldn't have that separately set out here under (b)?

Mr. Hilton: With respect, Mr. Chairman, it completely avoids (a); that is, made "any time after he receives the first interim report under subsection 2 of section 9 or the 30-day period mentioned therein has expired." The 30-day period would mean nothing, because all the complainant would have to do at any time would be to say, "You don't wait 30 days; you get in right now," and it's done.

Mr. Philip: That's not spelled out.

Mr. Hilton: That's the effect of it.

Mr. Elston: (Inaudible)

Mr. Hilton: And I thought that had already been decided really and voted on when you were voting on section 5.

Mr. Laughren: No, no. That is the point, surely, Mr. Chairman, that it is not an automatic process any more; it is when the complainant says, "Look, I have my concerns about this."

Interjections.

Mr. Laughren: Boy, I don't know why you are so defensive about that.

Mr. MacQuarrie: Mr. Chairman, implicit in the bill, and in fact expressly so, is the fact that under ordinary circumstances there is a 30-day period within which the police department can carry out the investigation of the complainant. That period can be abridged in certain circumstances by the public complaints commissioner.

There is good reason for the time period. There is good reason for having the complaints initially investigated by the police. Under ordinary circumstances, unless the public complaints commissioner is satisfied that the investigation is not being properly handled and if he intervenes, I see no reason why he can be pushed into it at the complainant's request earlier.

I can see good reason for the chief of police asking him to come in, because those are the sets of circumstances where the police chief feels the alleged abuse complained of would be possibly of a contentious or controversial nature and he wants a separate inquiry. But I think we would defeat the whole spirit of the act, as we envision it, by introducing this clause in this particular section.

Mr. Elston: I have a couple of short comments on this. I note that in particular there was some concern expressed at one point about those civilians who did not wish to come into contact with the police who are involved in the initial investigation.



I noted with particular interest at one point that the Solicitor General advised that the complaint could be filed either in writing or in person by the complainant with the PCC which would keep him away from any contact with the police officers. In his statement he was suggesting, therefore, that a full and proper investigation could be conducted, which would alleviate the fears and difficulties that a complainant might have who sensed a problem with the direct contact with the police.

Yesterday, in the course of the testimony provided by Superintendent Dickson--I think it is Dickson--of the complaints bureau, he advised us that the process was quite possible and that the person could stay away from any contact whatsoever with the police who are investigating the complaint, but that in his opinion it would probably be detrimental to the fullest sort of investigation being conducted.

In keeping with the difficulties which were pointed out by Superintendent Dickson yesterday, I think we should provide an opportunity for the independent investigation to be requested by the complainant. And we must be aware that the opening words of section 14(3) read that the public complaints commissioner--and I underline this--"may inquire into and investigate the allegations." It would then be up to him to determine whether he would proceed and go ahead with his investigation, to conduct an investigation in the fullest and the most co-operative sense of the matter.

It is in the light of those concerns, which were expressed earlier by a number of individuals who appeared in front of us, in the light of the suggestions made by the Solicitor General in answer to those, and again in the light of the response which was received from Superintendent Dickson yesterday, that I think this is a very worthwhile amendment to be put, and I would urge the members of the committee to support this.

3:40 p.m.

Mr. Williams: Mr. Chairman, we are back to this singular concern about whether there will be the opportunity afforded to and given exclusively to the chief of police to conduct that initial investigation within the 30-day period.

As I mentioned earlier, and as has been mentioned earlier on this particular proposed amendment, it obviously circumvents subclause (a) and as such endeavours to accomplish what the NDP amendment on section 5 tried to accomplish coming through the front door and which the Liberals tried to accomplish in section 9 coming through back door. Now the NDP is trying to come through the side door on the issue to again defeat the whole fundamental purpose, and I am looking for the next amendment that will bring it down through the roof dormer--

Mr. Laughren: Mr. Chairman, he is deliberately misleading the committee.

Mr. Williams: --to somehow defeat that fundamental

principle in the bill. So it's totally unacceptable if we are to preserve the integrity of the bill itself.

Mr. Philip: I am really flabbergasted at Mr. Williams's interpretation of what we attempted to do on section 5 of the bill. Clearly, our amendment to section 5 went a lot farther than this amendment does.

The key word, as Mr. Elston has clearly pointed out to the members of the committee, is the word "may." That was not the key word in section 5. In section 5 it would have been a completely independent investigation.

All we are doing is trying to give discretion to the public complaints commissioner that he may step in upon the request of the complainant. Clearly, that is not what section 5 did. It went a lot farther than that.

I am sure that Mr. Williams, if he will reread our amendment, will indicate that. This does not go as far as the amendment to section 5 did, and I would ask that people like Mr. Piché consider this.

Mr. Piché: They are trying to destroy my career here.

Mr. Philip: I gave Mr. Piché an opportunity on my amendment on section 5, and he struck out. Then Mr. Elston gave him a second chance. In the brotherhood that all of us share for one another around here, we wanted to give him a third opportunity to redeem himself.

Mr. Laughren: Count me out on that one!

Mr. Philip: So I would encourage repentance on your third opportunity, Mr. Piché.

Mr. MacQuarrie: Mr. Chairman, I find myself somewhat confused by Mr. Philip's remarks here--

Mr. Philip: That's all right; so does Mr. Laughren at times.

Mr. MacQuarrie: In particular, he referred to the use of the word "may" in the first part of the section. But if he just read further, it says: "may inquire into and investigate the allegations in the complaint." Surely in all of this the complainant must have some role. He has filed a complaint and has asked that it be investigated. The commissioner in those circumstances goes ahead and investigates it.

Mr. Laughren: I must say I don't understand the parliamentary assistant.

Mr. MacQuarrie: All you are trying to do really is abridge the 30-day period. That is really what the amendment does.

Mr. Laughren: No. If you read subsection 3 from the beginning, it says: "Notwithstanding any other provision of this

act, the public complaints commissioner may inquire into and investigate the allegations in the complaint"--and then go down to (b)--"upon the request of the chief of police or the complainant."

I think you are needlessly and inaccurately cluttering up the debate by including subsection (a) into it. By the way, there is nothing in here that says--personally, I would have preferred to change the amendment to read, "must inquire into upon the request of the chief of police or the complainant," but you will notice that, in the hope we could convince you to support this amendment, we left the word "may" in there so you couldn't say that is a "must do it" in there.

Mr. MacQuarrie: But these are circumstances under which the 30-day period can be abridged.

Mr. Laughren: No. That is your interpretation.

Interjection.

Mr. Laughren: He is not right. No, he is not.

Mr. MacQuarrie: He can come in at any time after he gets the first interim report or the 30-day period has expired. He can come in at the request of the chief of police--

Mr. Laughren: Exactly.

Mr. MacQuarrie: --within the 30-day period, or under an amendment that I proposed to introduce when this one had been disposed of--when he has reasonable grounds to believe there has been undue delay in the conduct of the investigations or that the investigation is not being conducted properly.

I just cannot fathom any attempt to further clutter up the section or to give another ground to abridge the 30-day period when he is already proceeding on the basis of a complaint lodged with them. It sort of defeats the whole purpose of giving that initial 30-day period to the police to investigate--

Mr. Laughren: Could I ask a question of the parliamentary assistant? Do you not agree that the complainant might not legitimately--not in every case--have cause for a completely independent investigation by the public complaints commissioner. That is why the word "may" is in there. There is no way I could see you accepting the word "must".

Surely, there can be some legitimate cases where a complainant would desperately not want it to be done in any other way. I know Mr. Williams thinks I am trying to get section 5 in here again, but that is not the case. This allows those legitimate cases where the public complaints commissioner may decide there really is justification for this kind of investigation, not the kind that is in the bill.

Mr. MacQuarrie: But, there are a number of ways of determining whether the complainant is right or wrong or whether his claim is justified. First, there is the investigation by the



police complaints bureau which presumably has to be done within the 30-day period. Second, there is the safeguard that if the investigation by the police complaints bureau is not being properly carried out or if there is undue delay in moving on it, that certainly would be brought to the attention of the commissioner either by the complainant or on the commissioner's own initiative. Then he gets into it.

What you are saying now in your amendment is that he can get into it, if he desires, if the complainant asks him to. But the complainant has already asked him to in the first instance by lodging the complaint.

Mr. Philip: But it does not say he must get into it if the complainant asks him to.

Mr. MacQuarrie: It does not say in this section he must get into it. He has to get into it and start monitoring the thing when the complaint is first deposited.

Mr. Philip: Let me try this out on you then: Supposing that the complainant has some information that would lead him and the commissioner to believe that some of the evidence will disappear if it is delayed for 30 days--that it will not be available. Either a witness may be going out of town or some bruises are going to disappear or some other evidence is not likely to be as strong after the 30 days. Surely, that would be the grounds on which the commissioner then should be given some discretion--to say, "Yes, it makes sense that we should move in now to investigate."

There is nothing in the amendment you are proposing next that would cover that kind of circumstance. I ask you to consider that. It is absolutely preposterous for Mr. Williams to say we are bringing this in through the back door of section 5. It is really not fair.

3:50 p.m.

Mr. Williams: This is a side door. You get the front door earlier.

Mr. Philip: A side door or the upper door or the basement door, whatever other door you want. The fact is that if we wanted to do that we would have used the word "must."

Mr. Williams: It is irrelevant whether you use "must," "shall" or "may."

Mr. Philip: "Must" would have given us the same as--

Mr. Williams: Your amendment defeats the 30-day investigative period.

Mr. Philip: "Must" would have given us the same thing, or something similar to our amendment on section 5. This does not. It leaves the discretion with the commissioner.

Mr. Laughren: In the spirit of compromise you could call it.

Mr. MacQuarrie: If we take the two examples which you gave--a witness not being able to be present, or a witness possibly (inaudible) the evidence of bruises and the rest of it. If those have not been noted and adequately covered in the report, which the commissioner would get in the course of his constant monitoring of a case, then there would be some question as to whether or not the investigation is being conducted properly.

I do not agree with you when you say the amendment as proposed does not cover those situations, because it does.

Mr. Hilton: With respect, Mr. Chairman, it seems to me that the word "may" or "must" or anything else may not be the entire determining factor. If the PCC was requested, as the amendment suggests, to hold a hearing himself--which I submit he probably would be in light of some of the observations we have heard here over the past two and a half weeks, in nearly every case--if he did not adhere to that, it might be well interpreted as some sort of bias or prejudice. You would then have a circumstance in the public press that would make it impossible for him to exercise any discretion. It would have to then be in that instance or nearly all instances.

True in the Albert Johnson situation there was a shooting and that was a criminal offence. Something with that type of profile, if the chief would request, should be done by somebody other than us so that the perception of the public will be that there is fairness. It should not be at the request of everybody who comes forward; otherwise the whole 30-day period would not be in there at all.

Mr. Philip: With the greatest respect, I think that was a very eloquent argument in favour of our amendment on section 5.

Mr. Laughren: Yes. Exactly.

Mr. Philip: This is going to happen anyway. The government in whose employ you happen to be is insensitive to the fact that this is going to happen anyway and that is why they did not accept the section 5 amendment which we made. This is going to happen whether you like it or not, because of that insensitivity on section 5.

We are saying we are giving you one small chance to broaden it just a bit so that he may move in where there are exceptional circumstances, where there is exceptional information. He may move in at his discretion where the arguments by the complainant convince him there is a need to move in at that time. Surely, it is very little to ask. It is not something that is going to be done every day. It might be done in one in 100 cases or one in 200 cases and the discretion is left to the commissioner.

I really find it hard to understand how you people boast about the great commissioner you have. You boast about his

tremendous background in civil liberties and so forth, and all of us agree with you.

Mr. Williams: Do you mean you do not like him?

Mr. Philip: If you would listen long enough--

Mr. Laughren: You should not put words in other people's mouths.

Mr. Philip: The problem, Mr. Williams, is that you never listen to anybody but yourself, and even then, you get such conflicting information that it adds to your confusion.

Mr. Williams: The only trouble I have is talking while you are interrupting all the time. But I am used to that.

Mr. Chairman: Mr. Philip has the floor.

Mr. Philip: I have just been interrupted.

As I said, when I was so rudely interrupted, surely then it makes sense to give this public complaints commissioner you and everyone are so proud of--everybody who came before us agreed it was a good appointment--surely a man of that outstanding character can be given some liberty, some discretion. Surely we can trust his judgement. That is all we are asking you to do.

Mr. MacQuarrie: His judgement is being trusted in almost every section of the act.

Mr. Philip: It certainly is not. First of all, you do not let him move in before 30 days and you put as many handcuffs on him as you can then. All we are saying is that where he has evidence--and this is not a man who is going to move frivolously--where he has evidence there is some reason to move in before that, he may do so at the request of the complainant.

Mr. MacQuarrie: You have agreed with the wisdom of the government in the appointment. Surely you can agree with the wisdom of the government in the bill that is coming forward.

Mr. Philip: No, I cannot. I agree with the appointment, and I am saying, "Give that man an opportunity to do his job."

You people grandstand by appointing somebody you think looks good, and then you shackle him with as many obstacles as possible so that he cannot get on with the job. If this man is as good as you claim--and I agree that he is--then why not give him the tools to do the job?

Mr. MacQuarrie: This bill gives him the tools to do the job. In fact, it gives him a few more tools than--

Mr. Philip: --than you people would like; that is what you wanted to say.



Mr. Hilton: The fact of the matter is, though, gentlemen, this is why it is pilot legislation.

Mr. Laughren: That is no excuse at all. There is no reason why pilot legislation has to be bad legislation.

Mr. Chairman: Is there any further discussion on Mr. Philip's amendment to section 14(3)?

Mr. Philip: Mr. Chairman, the deputy minister calls it pilot legislation. By the same analogy, in previous legislation and previous controversies, the Solicitor General has always talked about submarines--he has got a sub judice here and a sub judice there--anything to do with transportation that will in any way stop sensible small "l" liberal legislation from going through. About the only argument we have not heard on this one so far is the sub judice argument.

Mr. Chairman: Gentlemen, that is off topic here. Have you got something on topic, Mr. Laughren?

Mr. Laughren: As always.

I asked a question of the parliamentary assistant a few minutes ago, and did not get an answer. I do not know whether he is avoiding it, or whether he did not--

Mr. Chairman: What question was that?

Mr. Laughren: I am glad you asked.

Interjections.

Mr. Chairman: Gentlemen, we are going to get nothing done for the rest of the day if we do not keep going on--

Mr. Laughren: I am trying, I am trying. The question I asked--

Mr. MacQuarrie: Don't get carried away, Floyd.

Mr. Laughren: No. The question I asked was whether or not the parliamentary assistant could envisage the possibility of a complainant who had a legitimate request to have an investigation done by the public complaints commissioner rather than by the police. Can you envisage a situation where that would be legitimate?

Mr. MacQuarrie: Yes, I could.

Mr. Laughren: And what happens then?

Mr. MacQuarrie: That would come into play in instances where either the chief of police requests it at the expiry of the 30-day period, or within the 30 days if the commissioner had reason to feel there had been undue delay in the police conducting the inquiry or investigation, or if it was not being conducted properly. But if he was satisfied the investigation was being

conducted properly and in the interests of the complainant and the police department, then naturally he would not get involved.

Mr. Laughren: But you do not envisage any situation in which the complainant is the best judge of that?

Mr. MacQuarrie: Complainants sometimes are not the best judges--

Mr. Laughren: I did not say they always were.

Mr. MacQuarrie: I would say in a lot of cases, in encounters with police, the rights and wrongs of the situation are very difficult to assess. If you notice the number of complaints that Superintendent Dickson pointed out as being completely unfounded.

4 p.m.

What we have done here is where there are legitimate complaints that do not involve criminal activity, because the minute that criminal activity is involved the crown attorney is consulted and charges are laid as offences under the Police Act, or abuse of powers, if there is a valid complaint in those circumstances we say in the bill that we feel this can be adequately disposed of by the police within the 30 day period. But if they do not do what they are supposed to do, and what we were led by the reports from the police complaints department that they had been doing, then the commissioner is entitled to step in.

Mr. Laughren: So in fact you really are saying that in no instance--absolutely none, because the legislation is quite explicit--in absolutely no instance is the complainant able to judge properly that the investigation should be done by the police complaints department.

Mr. MacQuarrie: I would prefer to put it another way.

Mr. Laughren: I am sure you would.

Mr. MacQuarrie: I would say that in absolutely no instances under this bill is the complainant being prejudiced.

Mr. Laughren: Yes, but under absolutely no section of this bill is the complainant's judgement being given the benefit of the doubt either.

Mr. MacQuarrie: The complainant's judgement is certainly being given the benefit of the doubt in terms of his complaint.

Mr. Laughren: No, not in terms of who is going to do the initial investigation. Never.

Mr. MacQuarrie: Oh, come on.

Mr. Philip: Where? Show us where?

Mr. MacQuarrie: In terms of his initial complaint surely his judgement comes into play there.

Mr. Philip: And if he says, "Look, I have reasonable grounds to believe that the commissioner should move on these immediately,"--

Mr. Laughren: At the beginning.

Mr. Philip: --at the beginning, and he can convince the commissioner of that, what you want to do is to so tie up the commissioner that he can say: "I am sorry, even though there are reasonable grounds for moving now, my hands are tied. The Conservatives have tied me up for 30 days and I cannot move."

Mr. MacQuarrie: But the thing is they have not tied him up for 30 days.

Mr. Philip: He is monitoring. There goes all the information then, monitored, wave to it as it passes because it may not be available in 30 days.

Mr. Chairman: Mr. Shymko. Gentlemen, you are going back and forth without somebody having the floor.

Mr. MacQuarrie: You heard the chief testify yesterday as to the type of evidence that they took on complaints.

Mr. Laughren: I am not quarrelling with the evidence.

Mr. Shymko: There are two points that I wanted to point out with reference to this amendment to section 3(b). Every complainant no doubt will claim that he has reasonable grounds to proceed before the 30-day period. Any complainant will try to prove the urgency of his complaint. Ninety per cent, anyone who complains will try to urge an immediate investigation as soon as possible.

This amendment is once again based on the basic assumption and suspicion of a police bureau investigation which does not have credibility, that records may be stolen, things may disappear. In other words it is building again on the suspicion of the 30-day period if handled by the police bureau.

Mr. Laughren: No, not at all.

Mr. Shymko: I am talking basically what the normal person will feel, that every case of complaint is urgent to any individual who normally would want to proceed on the very first day of lodging his complaint to have the public complaints commissioner move in. So what is happening, by making that amendment you are putting undue pressure on the public complaints commissioner to distort, first, the whole nature of the police bureau and, second, to try to circumvent that 30 day period. Undue pressure is what you are putting on him.

The amendment as proposed by Mr. MacQuarrie to I guess it is 13(c) provides for special reasonable grounds. But what you are



doing is extending this and making it almost like a blanket impression on every complaint if the case is reasonable. Sure I will admit if I have a complaint I will say my case is very reasonable and I will urge the public commissioner to proceed immediately.

Mr. Williams: Even Mr. Elston is nodding agreement on that one.

Mr. Elston: I think the two key words that Mr. Shymko used there were "normal person" and I believe in all sincerity that we are dealing with the normal person. We are not dealing with the exceptional person, we are not dealing with the person who is somehow to be described as an outcast or whatever.

The normal person would have the feeling he would want to have his complaint investigated through the PCC. That is something we have been saying for quite some time and until now, very few of the individuals sitting across from us have recognized that the people who appeared in front of us and urged us to have an independent investigation, are normal people. I am glad Mr. Shymko has pointed out to us that these are normal people and that the request to have an independent investigation started under the circumstances would be normal. I am pleased to hear that.

Mr. Chairman: Thank you. Can we have the question on this amendment?

Mr. Philip: I thought I would at least be given the courtesy of a summation.

Mr. Chairman: No, Mr. Philip, you have summarized three or four times.

Mr. Laughren: A point of order, Mr. Chairman. I don't like calling this to a vote without Mr. Piché being here.

Mr. Chairman: That is not a proper point of order, Mr. Laughren.

Mr. Philip: Why don't we stack the vote until 4:30 when Mr. Piché will have an opportunity to vote with us?

Mr. Chairman: No. That also is not in order.

Mr. Philip: It is perfectly in order to call for a recess so you can call in your members. We just called in the members; Mr. Piché is here now.

Mr. Chairman: Shall we vote the question on Mr. Philip's amendment to section 14(3)(b)?

Mr. Philip: Would I be allowed to just summarize for Mr. Piché because he wasn't here and I think he might--

Mr. Chairman: No. Mr. Piché had every opportunity to be here. That is his decision.

I guess this will again be a recorded vote.

The committee divided on Mr. Philip's amendment to section 14(3)(b) which was negatived on the following vote:

Ayes

Breithaupt, Elston, Laughren, Philip.

Nays

Gordon, Hennessey, MacQuarrie, Piché, Shymko, Williams.

Ayes 4; nays 6.

Mr. Chairman: Mr. MacQuarrie, do you have a motion on section 14(3)?

Mr. MacQuarrie: Yes, I have a motion on section 14(3)(c), Mr. Chairman.

Mr. Chairman: Mr. Philip has a motion on section 14(3)(c) that was in before yours.

Mr. Philip: Mr. Chairman, I agree that the government has at least expanded 14(3)(c) from the previous bill by adding the words "or exceptional circumstances," but I really don't feel that it has given enough discretion to the public complaints commissioner.

Mr. Chairman: Mr. Philip moves that section 14(3)(c) be amended to read: "where he believes it is in the public interest to do so or where there are reasonable grounds to believe the inquiry or investigation is essential in the public interest, having regard to undue delay in the conduct of an investigation under section 9 or other exceptional circumstances."

Mr. Williams: (Inaudible) recommendation we had before us, Mr. Chairman.

Mr. Breithaupt: It might be, Mr. Chairman, that the three amendments could all be in effect before us at the same time since we are trying to sort out how best to deal with this theme.

4:10 p.m.

Mr. Chairman: That is quite a good suggestion. If you will hold that in abeyance, Mr. Philip, while--

Mr. MacQuarrie: I wonder if (inaudible) discussions with officials from the ministry.

Mr. Breithaupt: While that is happening, Mr. Chairman, perhaps we can place our amendment, the amendment being that in this instance, section 14(3)(c) be amended by deleting all words after the word "interest" on the third line.

As a result of that, of course, the theme of delay or other

exceptional circumstances would be, in effect, rolled into this phrase "the public interest" and it would allow some discretion in the public complaints commissioner to have that opportunity to deal with that theme based on what is already in the act which is a requirement that there are reasonable grounds.

Mr. Philip: Mr. Chairman, what Mr. Breithaupt has suggested I think does what we want, and it would be easier than having two amendments voted on. I am willing to withdraw my motion and support Mr. Breithaupt's motion instead because it essentially accomplishes what I want to do.

Mr. Breithaupt: Are you content, Mr. Philip, to remove those other lines?

Mr. Philip: That would do what I want to do so I am quite prepared to support the Liberal amendment.

Mr. Chairman: It is so withdrawn and we have one amendment in front of us. Mr. MacQuarrie, are you prepared to put your amendment? Mr. Breithaupt's motion was that section 14(3)(c) stop at the end of "interest" in the third line so that it ends up that the PCC may inquire when it is essential in the public interest.

Mr. MacQuarrie: Mr. Chairman, the amendment which I propose to put forward in effect restates clause (c) so that any confusion about the present wording of the section is eliminated and the grounds for intervention are clearly stated. As the clause appears now, I think by almost any test it is impossible of being properly interpreted. And I do not think the deletion of the words as suggested really improves it that much.

Mr. Williams: Can we have our amendment on the record, Mr. MacQuarrie?

Mr. MacQuarrie: I will put the amendment proposed on the record.

Mr. Chairman: Mr. MacQuarrie moves that clause 14(3)(c) of the bill be struck out and the following substituted therefor:

(c) where there are reasonable grounds to believe that there has been undue delay in the conduct of an investigation under section 9 or the investigation is otherwise not being conducted properly.

Mr. MacQuarrie: I think Chief Ackroyd, in some of his comments, alluded to the difficulty with this clause if I recall correctly.

Mr. Breithaupt: Mr. Chairman, we have before us just the two approaches to the subsection at this point. It may come as no surprise to you that I prefer the one that I have put forward, in that it seems to me if you are going to have the commissioner have some responsibility in this matter, you set a better tone by leaving the subsection exactly the way it is in those first two



lines and the word "interest." I think there may be some other occasion, a variety of these exceptional circumstances.

As Mr. MacQuarrie has suggested, there is no point in cluttering up the legislation if we can avoid it. I would think that by setting the theme as being the public interest, we would be more readily achieving what is hoped for. Setting out the particulars of undue delay or other exceptional circumstances is really unnecessary in this situation. I would suggest that leaving it as it is, with the removal of those words starting at "having regard," would be a better way of doing it.

Mr. MacQuarrie: Mr. Breithaupt puts forward a very strong argument, but none the less--

Mr. Breithaupt: You'd be prepared to disregard but you'd like to have it your way.

Mr. MacQuarrie: I disagree with it.

What he is leaving in by his amendment is the very general and uncertain clause which has been on numerous occasions the subject of various judicial interpretations and that is public interest.

Mr. Breithaupt: That is true, and it is what I would prefer to have in.

Mr. MacQuarrie: Yes, but what we have done is gone to the specific and that is "undue delay in the conduct of the investigation," or that "the investigation is not being conducted properly in the opinion of the public complaints commission."

Mr. Breithaupt: So in effect there are no exceptional circumstances otherwise or the public interest matter. You would prefer to have this only happening on these two areas? That's not unreasonable.

Mr. MacQuarrie: That was the--

Mr. Breithaupt: We have made our point. I guess that is all we can do at this point, Mr. Chairman.

Mr. Williams: That is the key point here, that the whole bill is in the public interest, the whole of its intent and purpose. We wanted simply to spell it out in a more specific way, without having that catch-all clause in there that really is motherhood in a sense, to have it covered by something more specific and meaningful that the commissioner could get his teeth into as far as having clear grounds on which to take action on the matter is concerned. These are clearly spelled out by the amendment.

Mr. Elston: I have a couple of comments. First, with respect to something stated earlier, Mr. MacQuarrie did acknowledge there may be circumstances where there would be facts available which would indicate that the PCC should do an independent inquiry. I think that would fall into the category of

the exceptional circumstances outlined in the unamended section 14(3)(c). The particular amendment he has proposed is a great deal more restrictive than the one proposed earlier, or than the bill as put before us.

That is unfortunate because it does detract, again, from the discretion that is available to an individual who has already been acknowledged to be of fine calibre and quality and who has also been acknowledged to have a great deal of ability in sensing what is right in the community. I don't think it will serve the purposes of this particular bill, whether it is a pilot project or not, to handcuff him further than is provided in the bill as presented. It is incumbent upon us to provide him with the ability to get in at a stage where he deems the public interest will be served.

I don't want to keep going back to individual situations, but I do feel there were happenings not that long ago dealing with the Albert Johnson case and with another in Metro Toronto, where the public interest might have been served--or it would appear that the public interest would have been served--if an independent inquiry had been launched before the actual incident happened.

4:20 p.m.

We know that Mr. Johnson had made several complaints to various authorities. We know that in fact the public interest was not served by having his untimely demise. We know that there the complaint was never resolved. I have a fear that there may be situations along those lines that may not come forward, or that at least may not be dealt with properly, and I think it would have been in the public interest in those situations to have dealt with it. I think that similar facts should be dealt with along those lines.

Mr. MacQuarrie: If I may interrupt just briefly, in the Albert Johnson case, as I recall, immediately after the incident, or very shortly after, the Toronto chief of police called in the Ontario Provincial Police to carry out an investigation. This would be the sort of circumstance in which he would request the public complaints commissioner, and if there were the prospect of criminal charges, bring him in.

Mr. Elston: I agree with that, but that happened after the fact. I guess what I am suggesting is that we do know for sure that Mr. Johnson had made several complaints before his demise--

Mr. Breithaupt: All to the human rights commission.

Mr. Elston: --all to the human rights commission, and in between the times somehow those were never dealt with. They may have been; we do not know for sure.

What I am saying is the public interest situation could have been served, and I think we should give the public complaints commissioner the right to deal with situations that would be in the public interest. I support the retention of those words. I do not think it is fair to restrict the public complaints

commissioner to the two situations that have been outlined in the amendment put forward by Mr. MacQuarrie.

Mr. Philip: I find it hard to understand why the government would have introduced an amendment which I see as essentially more conservative, more restrictive, if you want, than what is in the original bill. We have come a long way from the original bill on this one section. We have actually broadened it with the addition that the ministry introduced in this bill, and now suddenly we want to go back and narrow it again and put in more restrictions.

The amendment proposed by Mr. MacQuarrie is less open, gives less discretion than the original one in the bill, as I see it. We in the New Democratic Party and the Liberal Party want to move in the opposite direction. I do not know why the government has decided to go in a circle. I so far have not heard any evidence to that effect.

Mr. Laughren: They are drawing the wagons in a circle to fire inwardly.

Mr. MacQuarrie: You will recall the minister's statement as read this morning--mind you, my reading of the statement might not have been as distinct as it should have been.

Mr. Philip: I think your reading was admirable. I noticed that your finger did not move off the line at all on any occasion.

Mr. MacQuarrie: According to the statement, the amendment we have put forward has been in line with that suggested by Mr. Batchelor, that the wording as it existed in the section in the draft bill was vague and unclear, and that on careful review the government has felt that the clause being put forward adequately covers the situation and clearly defines the areas in which the public complaints commissioner can intervene.

When you deal with giving him the judgement over whether an investigation is being conducted properly or not, that certainly gives him a wide range of discretion.

Mr. Philip: That is what I want to do. We understand each other perfectly; we disagree but we understand each other.

Mr. Chairman: Mr. Breithaupt, do you wish your motion voted upon first?

Mr. Breithaupt: Yes, I think so, Mr. Chairman. That is the practical way in which to dispense with this matter.

The committee divided on Mr. Breithaupt's amendment to section 14(3)(c) which was negatived on the following vote:

Ayes

Breithaupt, Elston, Laughren, Philip.



## Nays

Gordon, Hennessy, MacQuarrie, Piche, Shymko, Williams.

Ayes 4; nays 6.

Mr. Chairman: Mr. MacQuarrie, I believe we are ready for your motion. Would you please read it into the record again.

Mr. Breithaupt: I think we can take the same vote reversed, Mr. Chairman.

Mr. Chairman: We don't yet technically have that motion on the floor.

Mr. Breithaupt: We have his amendment, sir.

Mr. Chairman: Not really, because it couldn't be put on top of yours.

Mr. MacQuarrie: I move that clause 14(3)(c) of the bill be struck out and the following substituted therefor:

"(c) Where there are reasonable grounds to believe that there has been undue delay in the conduct of an investigation under section 9 or the investigation is otherwise not being conducted properly."

Mr. Chairman: I believe we are ready for the question. Mr. Breithaupt's suggestion is that be reversed, that we take the same count.

The committee divided on Mr. MacQuarrie's amendment to section 14(3)(c) which was agreed to on the same vote reversed.

Mr. Chairman: Gentlemen, that takes us down to and not including 14(4). Is that a good place to stop for this evening?

Mr. Breithaupt: Before we do stop, can I just raise one point, Mr. Chairman, and that is to ask your indulgence and refer to something that perhaps our assistants could consider over the evening. That is section 4(4) where it says "one third of the members of the board shall be persons who have had training in law."

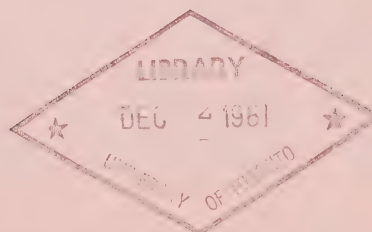
To my mind, that is the first time I have ever heard that phrase "training in law." It seems to me that that would cover everyone from a person who has taken a real estate course at George Brown College to some lawyer who has been disbarred. It certainly isn't the way we usually say things. If we want to have a lawyer, then we had better say "a member of the Law Society of Upper Canada", and if we don't want a lawyer, we had better say so; but I suggest that that phrase is worth looking at.

Mr. Chairman: Thank you, Mr. Breithaupt. That is well taken.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
THURSDAY, OCTOBER 8, 1981  
Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Kennedy, R.D. (Mississauga South PC) for Mr. Andrewes  
Taylor, J. A. (Prince Edward-Lennox PC) for Mr. Gordon

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Minister  
Ritchie, J. M., Director, Legal Branch

From the Ministry of the Attorney General:

Anderson, W. R., Registrar of Regulations

Also taking part:

Shymko, Y. (High Park-Swansea PC)



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 8, 1981

The committee met at 10:13 a.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

On section 14:

The Vice-Chairman: Gentlemen, if we could continue from where we left off yesterday, my recollection is that section 14(3) had been resolved. I believe Mr. Philip has an amendment to 14(4).

Mr. Philip: I believe the Liberals have the same amendment. If Mr. Elston wants to move it, okay. It doesn't matter to me who moves it.

On section 14(4):

Mr. Elston: Mr. Chairman, I move that section 14 be amended by deleting subsection 4 in its entirety.

I have a couple of points I would like to make. One is that again we are still trying to come to grips with the fact that we are creating an independent authority to look into the matter of complaints against the police and we feel that as long as there is an overriding right to review the decision of the public complaints commissioner when he decides to enter into the process early, that view of independence is greatly restricted and curtailed.

Again we think the public confidence may well be assisted a great deal if section 14(4) were removed and the PCC can make the decision unfettered by this question of review.

Mr. MacQuarrie: I must confess, Mr. Chairman, that the government looked at this section very seriously with a view to possibly removing it. In giving the matter very serious consideration it was felt that the section should remain as stated in the draft bill. It is really designed to permit the police department or the police chief, when they think the exercise of power by the public complaints commissioner is excessive or being abused contrary to his authority and is unreasonable, to have the right to have the exercise of that power reviewed under the Judicial Review Procedure Act.

I can appreciate Mr. Elston's comments and the concerns he has raised. None the less, I feel it is in the interest of the

overall spirit of the legislation and its successful operation that the clause be permitted to remain as is. I would therefore recommend that the amendment be defeated.

Mr. Kennedy: Mr. Chairman, without the legal knowledge of it, could somebody explain to me just what the hell this means?

The Vice-Chairman: Mr. Deputy, would you assist?

Mr. Kennedy: This appears in so many statutes. Could you provide a primer for me?

Mr. Hilton: In a matter of law it provides for an appeal to the courts where two people have discretionary power--here it would be the chief and the commissioner--and they have different views. It allows the divisional court the power of final determination to avoid the conflict between them.

10:20 a.m.

In other words, if under amended (c), the PCC, that is the commission, felt that there had been undue delay and the chief said there wasn't undue delay--it is like "After you, Claude," "No, after you, Alphonse"--the matter can be resolved by an appeal to the court for the determination of what I hope would never happen, but might potentially be a conflict between the two. It is a safety valve.

Mr. Kennedy: So the Judicial Review Procedure Act causes this to be brought to a resolution?

Mr. Hilton: It causes this to be determined by the court. It would hear both sides as to whether there has been undue delay or whether there has been fault in the investigation, faulty investigation, as was alleged by the PCC when he took it away within the 30-day period. The objection obviously is that by doing that the 30-day period may be even extended by reason of the pressures on the courts and the matter might be unduly delayed in taking it through the court process.

We have to accept that, I am afraid, when we look at the fact that we may be faced with two very senior officers in conflict.

Mr. Kennedy: Without this it may never get resolved. I fail to see why the sponsor of the resolution to delete it would want to delete it.

Mr. Hilton: I gave the reason for it. The deleters would want, I presume, to give the commissioner the absolute power to say so without his decision being reviewable by the court if he offended the chief of police in making that determination.

The Vice-Chairman: Mr. Elston, did you want to clarify something?

Mr. Elston: Yes, basically we felt the question of when the PCC decides to get in should be left to him and that would be

the best way of keeping him independent of the whole process. Once we feel that you have this section coming into play, he can make the decision to go in on the tenth day, the twelfth day or whatever day of the process of the investigation.

Then the application would be made by the chief of police or whatever and that might well take a week, 10 days, 15 days for the matter to be heard and dispensed with by the courts, as Mr. Hilton said. In that way they could effectively defeat any decision to be made by the PCC to get into the investigation early.

I might well add at this particular time, since I see section 14(3)(c) having been reduced in its scope to only two times when the PCC can exercise his discretion--those two times being undue delay or improper carriage of the investigation by the police--I think since that has taken place and the discretion has been limited so much more, that in fact this really becomes surplus power in the hands of the police chief. That is why I have proposed this amendment.

Perhaps I might ask a question also of our committee solicitor if I might. Without this section, is there any chance the Judicial Review Procedure Act would apply at all?

Mr. Ritchie: Yes, I believe it would still be reviewable.

Mr. Elston: It would still be reviewable, not only by the chief but also by the individual complainant I would presume. He is the party affected by the order, I would expect.

Mr. Ritchie: I guess it would be a motion to tell him to do his duty.

Mr. Elston: In line with mandamus, or the old mandamus so to speak.

Mr. Ritchie: That is correct.

Mr. Elston: So in actual fact what our solicitor has also advised is that this section is redundant along the same lines as other proposed amendments were deemed to be redundant by various speakers before us. You might well determine whether or not it is even needed in that line as well.

The Vice-Chairman: Thank you, Mr. Elston. Mr. Philip?

Mr. Philip: I think I will take a raincheck.

The Vice-Chairman: I am sorry, Mr. Ritchie wishes to make another comment.

Mr. Ritchie: I did not wish to give a firm legal opinion on the point, because I have not researched it. It is a possibility that it is redundant, but I am not sure, not having researched the thing. So I would not want to go that far.



Mr. Elston: Maybe we should forgo dealing with this matter till it has been researched.

Mr. Ritchie: The problem is, sir, I would only be giving you my opinion in any event. A court might rule differently.

Mr. MacQuarrie: Mr. Chairman, when the matter was reviewed and when we were considering the prospect of deleting the section, that very question came up as to whether the Judicial Review Procedure Act would be applicable in any instance whether it was specifically stated in the act or not.

There was an opinion expressed that it would be applicable, but in any event we felt it not only a wise decision but also a good decision to leave the section as is and clearly indicate that the statutory powers reviewable under the Judicial Review Procedure Act be specifically referred.

Mr. Hilton: If I may, Mr. Chairman, one might say it is for greater certainty.

Mr. Elston: Is it your understanding, Mr. Hilton or Mr. Ritchie, that the complainant would be entitled to seek that review as well?

Mr. Ritchie: Yes. There is no restriction on the clause. It is deemed to be the exercise of a statutory power; therefore, complainants or police officers--

Mr. Elson: So the person who would be affected by that really would be entitled to its use?

Mr. Ritchie: That's correct.

Mr. Kennedy: It really means they are assured of an avenue of resolution to the problem as under 19(3c).

Mr. Hilton: Which avenue, as we have already said, may be open; but for greater certainty, so that we are sure it is open, it is left in.

Mr. Kennedy: It seems to make sense to me to leave it in there.

The Vice-Chairman: Mr. Philip.

Mr. Philip: I think this was one of the requests of the Canadian Civil Liberties Association. I am trying to look through their brief to find the specific section of their brief in which they mention this. I have not been able to locate it, but I am fairly sure that was one of their requests.

It seems to me that what we have done in the earlier parts of this particular section, in dealing with the subsections of 14, is to reduce the powers that Mr. Treleaven has; and there comes a point where we say--

Mr. Mitchell: Mr. Who?

The Vice-Chairman: Mr. Treleaven? You are giving him more credit than he is entitled to.

Mr. Philip: Mr. Linden.

Interjection: Do you know something we don't know?

Mr. Laughren: Quite a bit, as a matter of fact.

Mr. Philip: I'm sorry. When Mr. Treleaven is not here, I miss him; so it is a subconscious desire, I guess.

The Vice-Chairman: It's a reaction.

Interjection: A Pavlovian reaction.

Mr. Philip: I don't see what is Pavlovian about him. I certainly would not insult Mr. Treleaven by calling him a dog, and I am ashamed that you would think of doing that.

What we are doing here is just whittling away Mr. Linden's powers some more; so we will support the motion.

Mr. Wrye: Mr. Chairman, in a way it is nice to be back in the calmness of Toronto, but I see while I have been gone that in my opinion perhaps the single largest redeeming influence in the bill has been itself really ruined beyond repair. Section 14(4) just really adds to the kind of insult that we would be giving to the very many groups that expressed very real and important concerns.

10:30 a.m.

Since we have already had a tentative opinion from the solicitor that the powers of appeal would be there even without this section, by leaving it in it seems to me we are simply inviting the kind of confrontation that the Solicitor General has repeatedly said he hoped would not occur. We have said to the police chief, "Even where the PCC enters on these two very narrow grounds we now have in section 14(3c), you are welcome to challenge his right to do it even on those occasions."

I would hope that we would show some understanding of the concerns that have been expressed to us for two and a half weeks by virtually every other group, other than the chief and the association, by deleting the section. I hope the committee will so vote.

The Vice-Chairman: Do any other members wish to speak on this amendment? If not, can we have a recorded vote, please?

The committee divided on Mr. Elston's motion, which was negatived on the following vote:

Ayes

Mr. Breithaupt, Mr. Elston, Mr. Laughren, Mr. Philip, Mr. Wrye.

Nays

Mr. Kennedy, Mr. MacQuarrie, Mr. Mitchell, Mr. Piché, Mr. Shymko, Mr. J. A. Taylor.

Ayes, 5; nays, 6.

Section 14(4) agreed to.

The Vice-Chairman: Are there any further amendments with regard to section 14? Mr. MacQuarrie.

Mr. MacQuarrie: Yes, Mr. Chairman. I have an amendment with respect to subsection 5.

The Vice-Chairman: Is it a new subsection? Oh, I see.

On section 14(5):

Mr. MacQuarrie: It restates the subsection to correct a technical error with respect to the forwarding of reports.

I move that section 14(5) of the bill be struck out and the following substituted therefor:

"(5) The public complaints commissioner shall forthwith notify the chief of police in writing of his intention to conduct an inquiry and investigation under clauses 3(a) or (c) and shall give his reasons therefor in writing, and after he completes any inquiry and investigation under subsection 3 he shall forward the results thereof to the chief of police, and the chief of police shall consider such results in his review of the final investigation report under subsection 10(1)."

Mr. J. A. Taylor: There do not appear to be any changes in that section.

The Vice-Chairman: Mr. MacQuarrie, would you like to elaborate on the reason for the amendment?

Mr. MacQuarrie: As I indicated, Mr. Chairman, it corrects a technical error in draftsmanship. You will note that there is--

The Vice-Chairman: "After he completes any inquiry and investigation"?

Mr. MacQuarrie: "After he completes any inquiry and investigation"--

The Vice-Chairman: Under subsection 3.

Mr. Breithaupt: Instead of "after his inquiry an investigation is completed"?

Mr. MacQuarrie: Yes.

Mr. Hilton: Mr. Chairman, this was a drafting error



only. I have been discussing the matter with Mr. Ritchie. The way the section read before, it said: "after his inquiry and investigation is completed and be qualified by (a) and (c) above".

What this amendment does is require a report also upon any finding or result when it was requested by the chief under (b). So the new wording says, "after he completes any inquiry and investigation under subsection 3." That covers all the paragraphs of subsection 3.

The Vice-Chairman: Is that understood? Are there any questions from the members?

Section 14(5), as amended, agreed to.

Section 14, as amended, agreed to.

Mr. Breithaupt: Mr. Chairman, before we go on, you may recall I raised a question yesterday on adjournment with respect to the phrase "training in law." Has anything been considered?

You may recall that back in section 4(4) we referred to persons who had training in law. I suggested to the committee that that could be anyone who has taken a real estate course ranging to someone who has been disbarred.

This phrase "training in law" is one that certainly I have not seen before. Usually we require someone to be a member in good standing of the Law Society of Upper Canada, as the phrase goes. But, depending on what is wanted, I just thought it was worthwhile to think about that.

The Vice-Chairman: This is a section that has been carried procedurally. Would the members agree to reopen this matter?

Mr. Philip: On the point of order, Mr. Chairman.

The Vice-Chairman: Do you wish to officially reopen it, or do you just want clarification?

Mr. Breithaupt: I was just raising it because I do not know of any occasion that I have seen before where the phrase "training in law" means anything. If you want a lawyer to be appointed, then the usual way to put it is "a member of the Law Society of Upper Canada," because that is what it means. If that is not what is necessarily wanted--as I say, I do not know what "training in law" means.

Mr. MacQuarrie: Mr. Chairman, Mr. Breithaupt makes a good point. If it does not fly in the face of precedent or affect the orderly conduct of the business of the committee in dealing with the bill from here on, I would have no objection to an amendment to that section.

The Vice-Chairman: Mr. MacQuarrie, we cannot reopen a

section that has been dealt with without the full consent of the committee.

Mr. Philip: On a point of order, Mr. Chairman: If you had been paying attention in the early stages of this committee hearing, you would know that I had brought up the matter with the chairman and that, because we might have additional information at some later date, it might be necessary to go back and reopen certain sections. He thought that that was reasonable and, indeed, he said, "I believe we have the consent of the committee to reopen at any time any section."

That was the decision by the chair at that time. It was not challenged and, therefore, it assumed that it had unanimous consent since it was not challenged. Even though I may or may not agree with Mr. Breithaupt on this one point, I think he has a legitimate right to bring it up and try to convince the rest of us about this matter.

The Vice-Chairman: Mr. Philip, I am going to reiterate what I said a few moments ago, regardless of your editorial comment. I will not reopen this matter without the full consent of the committee. I do not care what the former chairman said.

Mr. Philip: I think we should leave it until the chairman returns to conduct these hearings properly.

The Vice-Chairman: If the members are prepared to give full agreement to reopen that section, that will be done.

Mr. Mitchell: Recognizing the question that Mr. Breithaupt has raised, as I would read his query, I would think it really would fall within the area of a definition. Surely it would not require us then to go back. If one wishes, that could be included under the definition clause. I am not a lawyer; I do not presume to be one.

The Vice-Chairman: That still takes you back to sections we have already dealt with. Is it the wish of the committee to reopen this?

Mr. Breithaupt: I only wanted to raise this point because it is not changing the numbers or anyone else who is to be appointed. I just thought we had better make sure that we knew what we meant in that phrase, because it is a phrase that I had never seen before in any legislation. If that is what is wanted, that is fine. I only raised the point because, if you want a lawyer, that is not the way you say so. That is the only reason I raised it.

The Vice-Chairman: You asked staff to consider the matter yesterday. Mr. Hilton, do you have some response to that request?

Mr. Hilton: I have no response. The way it is here was in the initial paper that was prepared. On the other hand, I agree with Mr. Breithaupt that there is a possibility of confusion. You may get somebody who took a high school business course with an

overall course of one hour a week in law and he could say he is trained in law.

10:40 a.m.

The safeguard in leaving it the way it is that the order finally has to be made by the Lieutenant Governor in Council. Obviously they would be concerned about the adequacy of the training of the person holding such a job.

Interjection.

Mr. Hilton: Greater certainty I think would flow from your remark, sir. I really do not feel that too much turns on it. However, I personally--

The Vice-Chairman: Is it your wish, Mr. Breithaupt, to have a clear definition given to this? If so, I will have the legislative counsel work on something while we are dealing with other sections here and then come back to it. If it is the wish to the committee to reopen the section at that time we will go back and deal with it.

Mr. Breithaupt: That is fine, Mr. Chairman. I just raised the point--

Interjection.

Mr. MacQuarrie: With the unanimous consent of the committee, the government members certainly would support an amendment by Mr.--

Mr. J. A. Taylor: It is the ecumenical spirit.

Mr. Kennedy: What are you going to put in lieu?

Mr. Hilton: The words will be that one third of the members of the board shall be members in good standing of the Law Society of Upper Canada.

Mr. Kennedy: Does that mean a limit or--

Mr. Hilton: No.

Mr. Piché: Is that what you want?

Interjections.

Mr. Piché: At this point background or training in law could do pretty near as good a job as a lawyer. Today you have to have a lawyer for everything you do. Maybe now the time has come to put in somebody with common sense.

Mr. Hilton: Touché, Mr. Piché.

The Vice-Chairman: At this point I would like to determine the wishes of the committee as a whole. Is it the wish



of the committee to return to section 4(4) for the purpose of dealing with that subsection exclusively?

Mr. Kennedy: Mr. Chairman, before you put the question, it would seem to me--

The Vice-Chairman: It is just a question of whether you want to go back to it. I had a comment from Mr. Laughren.

Mr. Laughren: Is there a danger that we are losing sight of the significance of the debate here? Maybe it should be not so much what the definition of the training in law is in this section as to whether or not it is necessary to have people with any training in law on the board. That is probably the more fundamental question. Maybe that is the change required in the section rather than a specific definition of training in law. I doubt that we do, quite frankly.

Mr. MacQuarrie: Training in law appears in subsequent sections, particularly in hearings by an individual member of the panel of this--

Mr. Kennedy: Mr. Chairman, with the redrafting of this bill and it turns up in the form it is now, and now we are saying we want one third who will be solicitors, it just seems to me--

The Vice-Chairman: I think that is the thrust of Mr. Breithaupt's observation.

Mr. Kennedy: --it is a dramatic change. I would think this is in here for the purpose of putting other than lawyers on the board--putting qualified lay people on.

Mr. Piché: I would agree with Mr. Kennedy on this one.

Mr. Breithaupt: That may be, Mr. Chairman, but the initial information before us was that it was the intention to have lawyers appointed.

It does not matter to me which way you want to go, but the intention was that one third of the members would be lawyers and that those persons would always be the chairperson on the panel. That is what your intention is. If you want to phrase it this way that is fine but you had meant to do otherwise. I am just trying to make sure it is clear so that you say what is meant. If that is not meant that is fine.

Mr. J. A. Taylor: On a point of order, either you are going to reopen the section and debate it or you are going to leave it. I would suggest--

The Vice-Chairman: That is right. I have given a lot of latitude on this. Is it the wish of the committee to pursue this matter? Otherwise the whole discussion is out of order, unless you wish, as a committee, to go back--

Mr. Philip: Mr. Chairman, with the greatest of respect--

The Vice-Chairman: I'm sorry, Mr. Philip--

Mr. Philip: (Inaudible), Mr. Chairman, it is perfectly legitimate for me to speak on the point of order.

The Vice-Chairman: You are speaking on the point of order, yes.

Mr. Philip: You cannot run a committee by coming to one set of rules at the beginning of the hearings and then go back on that set of agreements. I suggest to you that even though I may vote against what Mr. Breithaupt says, having listened to persuasive arguments from Mr. Piché, you simply cannot change the rules of the game.

We agreed we could open up any section in this. Therefore it is inappropriate that another chairman at a later stage in the hearings would change those rules. Either we have agreements or this committee does not operate at all.

The Vice-Chairman: Mr. Philip, for your edification there was some general discussion at the earlier part of this session on the clause-by-clause discussions which indicated that if the committee unanimously thought there was some justification for going back to consider a section that had already been discussed it could do so. That is simply the consistent position I am taking on this matter. I am not going to entertain further discussion on this section.

Mr. Philip: The word "unanimous" was never mentioned.

The Vice-Chairman: You listen, will you, for a moment? I am not going to entertain further debate on this topic unless the committee unanimously wants to go back to deal with this subsection of section 4. That is consistent with the procedure and practice--and it is consistent with what you are saying, quite frankly. It is no different from what was discussed earlier.

I would like to know whether the members wish unanimously to go back and discuss this section; otherwise, we are going to go on to other matters.

Mr. MacQuarrie: Before we do, Mr. Chairman, I have had a discussion with the departmental solicitor who was involved very much in the preparation of the bill. With your permission, notwithstanding your ruling about further discussion, I would like to outline something of the background of the wording--that is that--

Mr. Wrye: Perhaps we should hear the question about going back--

The Vice-Chairman: Yes. I am sorry, Mr. MacQuarrie, I have to stay with that ruling. If we want to develop this matter further, it has to be with the unanimous consent of the committee.

Is the committee unanimously prepared to reopen for further

discussion and consideration an amendment to section 4(4)?

Mr. Philip: If it were not for the sake of not being fair to Mr. Breithaupt, my inclination would be to vote against going back and then challenge the original ruling. However because I think Mr. Breithaupt does have a legitimate point he wants to have discussed I will not do that.

The Vice-Chairman: Do I have the unanimous consent of the committee?

Agreed.

The Vice-Chairman: All right. We shall now reopen for consideration section 4(4).

On section 4(4):

Mr. Breithaupt: Mr. Chairman, perhaps if we could just come back to this one very narrow point. It is my understanding that it was the wish when the legislation was brought in that a third of the persons appointed would be lawyers and that those persons would be the chairmen of the various panels which the act expects to have.

If that is the intention of the government--to make sure that they have a lawyer--then the way to say so in my view is that this phrase "have had training in law" does not mean anything, at least in our tradition. The proper way of saying it, if that is what you want, is to say "persons who are members in good standing of the Law Society of Upper Canada."

If you do not want to have--

The Vice-Chairman: Do you wish to put that in the form of an amendment?

Mr. Breithaupt: Yes. I would move that section 4(4) of the bill be struck out and the following substituted therefor: "One third of the members of the board shall be persons who are members in good standing of the Law Society of Upper Canada."

I suggest that is the way it should be phrased, if that is what you want to have done. If that is not the wish then of course it should stay as it is; but the phrase as it now exists does not have meaning in our tradition of doing things.

Mr. Philip: Despite Mr. Piché's strong arguments to the contrary, I have one argument that I think allows me to support the motion--namely that this motion, as I understand it, will make it impossible for Mr. Tom Wardle, Jr., to be appointed because I understand he has legal training but is not recognized by the Law Society of Upper Canada. For that reason I will support the motion.

Mr. MacQuarrie: I have a great deal of sympathy for Mr. Breithaupt's motion, but I think before we deal with it we should have some indication of the background of why the section was drafted in this wording. I wonder, Mr. Ritchie, if you could



outline for the committee some of the thoughts that went into it.

10:50 a.m.

Mr. Ritchie: I think I will defer to the deputy minister. He has spoken to the minister.

Mr. Hilton: The original idea of the whole thing was so that the hearings would be conducted in a manner akin to an orderly procedure. It was hoped we would have one third of the persons who had experience in conducting such quasi-judicial hearings. I respectfully submit that the amendment Mr. Breithaupt has submitted would more nearly carry out the objects of that intent as against the way it is written. It was written this way because it was taken over from conceptual notes that were not spelled out in detail.

Interjection.

Mr. MacQuarrie: There is no problem.

Mr. Shymko: Mr. Chairman, I think the intention of section 4(4) is to provide a wider sector of qualification with specific training in law but not to straitjacket or limit the membership strictly to the legal profession. There have been valid points raised by a number of honourable members during the hearings that the police complaints board should be representative as widely as possible of various sectors of society.

There may be a situation which involves someone who has the training in law but is not necessarily a member of the legal profession. I think you may have an individual of calibre with a number of criteria and qualifications, including qualifications of training in law, but not necessarily a member of the legal profession. I think we should not create a straitjacket confining the members to only the legal profession. Rather we should make it as wide as possible. It may be a member of a minority--

Mr. Breithaupt: That is not the point.

Mr. Shymko: That is the point. The point is that the intent is there. You may have lawyers. They may all be lawyers or one individual may not necessarily be a lawyer but has training in law.

Mr. Breithaupt: Not in that third. It is the intention of the government to appoint only lawyers in that third. The other persons of whom you speak may well be appointed in the other categories. That is your government's intention. It is not my fault; that's what you wanted apparently.

Mr. Shymko: That may be your impression of the intention. That may not necessarily be the intention.

Mr. Breithaupt: It is what the Solicitor General (Mr. McMurtry) said. I think that is a pretty good intention.

Mr. Shymko: I would prefer to leave the terminology "persons who have had training in law, but not necessarily members of the legal profession," to provide the type of flexibility that has been discussed in this committee from the very beginning.

Mr. Wrye: It seems to me this is one area where it appears the Solicitor General is going to agree with the opposition amendment. I noted in studying the bill at the outset that the words "training in law"--and I bow to Mr. Breithaupt's superior knowledge that he has never seen those phrases before--seemed a little strange to me, a little loose and a little vague.

In talking with a number of law professors about the bill before these hearings began they agreed with me as well that the phrase "training in law" could simply allow for the appointment of somebody who had taken a single law course as part of an undergraduate degree.

Mr. Piché: What is wrong with that?

Mr. Wrye: It seems to me, Mr. Piché, that as you get down a little further to section 18--particularly subsection 2, which has the member who is trained in law--and we propose to amend it to "a member in good standing of the Law Society of Upper Canada", conduct the hearing alone, it would be important that person be a lawyer.

Mr. Shymko's point is that there should be no straitjacket, and I hope that both Metropolitan Toronto council and the association and board of police commissioners would note that there are already in place, through this bill, if the amendment carries, five lawyers, and that they would move to appoint 10 other members who would represent the broadest possible spectrum of society. There would, it seems to me, then be very little need for them to add a lot of additional lawyers. So I would certainly say that this is one amendment which I can support and support wholeheartedly.

Mr. MacQuarrie: On this particular point, there is no question that if we want lawyers on the board, and lawyers capable of practising in Ontario, we should use the wording that Mr. Breithaupt has proposed. But you have to remember, and I will take up a bit of Mr. Shymko's theme, that a very substantial percentage of the law professors in Ontario law schools are not members of the Law Society of Upper Canada.

You have to remember that there are a substantial number of immigrants to this country from other Commonwealth jurisdictions who have been trained in the common law who are not members of the Law Society of Upper Canada and yet have very thorough and detailed knowledge of the law, some of them maybe having exercised judicial functions. You have to take these things into account, and it could well be that these people with that sort of training might well represent some of the minorities who are affected by possible police actions or police activities.

As I said at the outset, I have no quarrel or complaint with

Mr. Breithaupt's amendment. I just want the committee to consider all of the aspects of the situation in coming to a decision on this matter. As far as I am concerned, speaking for the government, it is an open vote.

Mr. Piché: Fine.

Mr. Mitchell: Mr. Chairman, I have been listening to both sides of the argument here. Mr. Shymko has raised some good points. Mr. MacQuarrie raised a very interesting one, that some law professors, for example, are not members of the Law Society of Upper Canada. I have also heard Mr. Breithaupt's consideration that he felt it was necessary to have lawyers because they were going to be chairmen of various panels and so on.

Mr. J. A. Taylor: Not lawyers, members of the law society.

Mr. Mitchell: Members of the law society, I am sorry, pardon me.

Mr. Breithaupt: That is the point that you wanted.

Mr. Mitchell: Yes. Maybe I am somewhat tending towards the concerns expressed by Yuri here, and I guess I am looking for some guidance and perhaps some comment from Mr. MacQuarrie or Mr. Hilton. I am not too sure but what the paragraph itself should not stay the way it is and that in the definitions somewhere it be pointed out--Mr. Breithaupt raised the issue of a person having been perhaps disbarred or what not--if in the definition it were to say someone with training in law who has not had any conviction or something, or whatever--and I am looking for assistance here on the wording--maybe that will answer both sides. I am not sure whether you can appreciate the direction my argument is going.

Mr. Breithaupt: I can see the point of view that Mr. Mitchell is trying to make. My point is simply that this phrase "training in law" is something--

Mr. Mitchell: It is nebulous, yes, it is nebulous.

Mr. Breithaupt: --that we never use. I cannot recall ever having seen it in a statute. If you want a lawyer then the way you say so is a member of the Law Society of Upper Canada.

Interjection.

Mr. Breithaupt: No, it does not, in the sense that any law professor can simply apply and is formally accepted into the law society while he is a professor, that is not a problem. You are dealing with a handful of people out of 14,000 lawyers in the province.

If that is the one thing that would stand in anyone's way, that person could automatically be accepted by convocation and become a member of the law society overnight.



11 a.m.

I agree with Mr. Shymko's view that we want to keep this as broadly based as possible, but it was the intention when the bill was brought in that there were three categories of people to be appointed and the two categories from the Metro police force and from the Metropolitan council were to cover that. It was the intention in the bill that the person who was the legally trained person would be chairman of these various committees. That was the intention of your legislation.

If you want to change it, that's fine, but this phrase "training in law" is something which is not used. If you want a lawyer, say so; if you don't want a lawyer, you can leave it as it is, but I think your intention was that you wanted a lawyer for the chairman of these groups because there would be some way of dealing with situations. If you want a third of your people to be lawyers--and certainly you don't want everybody to be, of course not--if that is what you wanted, then you should say so clearly. That is the only reason I raised it in the first place.

The Vice-Chairman: I think certainly that was the intent expressed from the outset both by the minister himself and others. Certainly that was the understanding.

Mr. Breithaupt: I think so.

Mr. MacQuarrie: These appointments are made by the Lieutenant Governor in Council and by the Solicitor General and I think a certain amount of discretion should be left with the Solicitor General in terms of determining the adequacy of training in the law. Consequently, you could well pick up persons who would not be members of the Law Society of Upper Canada and yet would be quite capable, in fact possibly more capable, than a member of the law society in dealing with this area.

Mr. Breithaupt: You could, for example, pick a retired magistrate from the earlier years who had never been a lawyer. There are still some of those.

Mr. MacQuarrie: There are quite a few.

Mr. Breithaupt: That's true. You can do that if you want to. I am just suggesting that you know what might result from the definition. That's all.

The Vice-Chairman: Mr. Laughren now, and then I have three other speakers who have already spoken once or twice and I want to limit them to one further comment. After Mr. Laughren, I have Mr. Philip, Mr. Mitchell and Mr. Taylor, who has not spoken on the issue yet.

Mr. Laughren: For the first time in living memory, I have been persuaded by the eloquence of the parliamentary assistant. I think he makes an excellent point as to who could well serve this board. It is conceivable that someone who would be a natural for it is not a member of the law society. It would be

very easy to imagine people like that, I would think. There are people in this room.

Mr. Piché: There is Judge Marcel Leger from Hearst, Ontario, whose background is in teaching. He has been a judge for years and a good one.

Mr. Laughren: There is one in Sudbury too. We won't talk about his background, however.

The fact is I do not think it should be restricted, because you would very definitely eliminate people by putting that in. I just do not think that is necessary. You can be sure that each of the groups that is going to be making appointments is going to want a legal person among the appointees to the board. I think that is safe to say.

Both the police association and the commissioners are going to want one of their people to be a lawyer and then, of course, it is up to the Solicitor General to provide a balance to the committee. I suspect that is why it is worded the way it is. The Solicitor General can look at who the other appointees are and then decide who is appropriate to make up the balance of the board.

Mr. Piché: Is being trained in law the same as being knowledgeable in law? No.

Mr. Philip: Mr. Chairman, sympathetic as I might be to Mr. Shymko's and Mr. Laughren's concerns, the fact is that you still have two thirds of the appointees who could take into account and would take into account if there were an exceptional person who had training in law but was not defined as a member of the Law Society of Upper Canada. I don't think, as you suggested, that it eliminates somebody who happened to be a lawyer in Europe or Uganda or wherever. These people can still be appointed.

There are two thirds of the appointments left if they are exceptional people, or even if they are para-legal people, such as somebody from the Federation of Metro Tenants' Associations or Tenants' Hotline or one of those groups, who are not lawyers but are very specialized in a certain form of law, or somebody in consumer law.

Mr. Laughren: Do those lawyers investigate themselves?

Mr. Philip: All I am saying is that I think your concerns can still be met in the context of making the changes that Mr. Breithaupt has suggested.

Mr. J. A. Taylor: I thought maybe it was time, Mr. Chairman, that you heard from the rural community and put that perspective on the hearings.

As I understand it, the argument has been made that there should be people on the board who are familiar with the procedures that will ensure a proper, fair hearing. I am assuming that may be a reason. If you have a board that is conducting hearings, you will want to make certain that those hearings are conducted in an

impartial, fair and even-handed way. Surely people with the experience to ensure that are important participants in that process.

I appreciate there may be people with law degrees from this province who are not members of the law society. We are not really talking about the educational qualifications; we are presumably talking about someone who would have some familiarity with the judicial process.

The Vice-Chairman: I suppose that would include disbarred lawyers as well then, wouldn't it?

Mr. J. A. Taylor: It might, except that if the amendment suggested by Mr. Breithaupt was inserted, that would preclude that. It is for that reason I see the merit in the Breithaupt amendment. That does not detract in any way from the makeup of the board in terms of representations from different parts of the community. Therefore, I would certainly support Mr. Breithaupt's amendment.

Mr. Chairman: Mr. Mitchell, your last kick at the cat.

Mr. Mitchell: Yes, very briefly, Mr. Chairman. Again, I listen to the comments made by all members here. When one looks at the wording, I am not so sure the wording need be changed, because if one reads that paragraph in relationship to paragraph three, the appointments are made by the Lieutenant Governor in Council, and surely when the appointments are made the scrutiny is going to made of all of those whose names have either been submitted or what have you.

They may well be lawyers. They may well, however, be the law professor that Mr. MacQuarrie has talked about, or a former magistrate. In all honesty, I must say I am leaning towards leaving the paragraph as it is because assuming that it equates to the previous paragraph three, we know they are all going to be people of high repute, if that was the concern.

The Vice-Chairman: Mr. Kennedy had a supplementary and then I am going to call the vote.

Mr. Breithaupt: Mr. Chairman, in discussing it with Mr. MacQuarrie, he is of the view that having considered it, the option should be there for additional persons who could be appointed who had some knowledge, training or background and also the knowledge of conducting this kind of inquiry.

11:10 a.m.

I had brought the amendment in only to make sure that the definition was clear if that was what was wanted. I take it now that the view is that others may be appointed and it is the intention to consider that kind of an appointment. I am quite happy, having had this discussion, to withdraw my amendment, since it appears that the government is mindful of the likelihood of appointing lawyers but wishes to perhaps have the occasional additional person appointed, and obviously I think that is just



fine. My only point in making the amendment in the first place was that we said what we meant. If that is now the view, that that bit of additional opportunity might be there, that is fine with me.

The Vice-Chairman: Mr. Kennedy, you had a supplementary.

Mr. Kennedy: Yes, it is really redundant. We find now that they had in mind it would be five lawyers, but I ask Mr. Hilton, did you have in mind five lawyers who were members in good standing in the Law Society of Upper Canada?

Mr. Hilton: I would submit that was what was in mind, Mr. Kennedy, because it has already been stated the person might have been a disbarred lawyer. I can't conceive of the Lieutenant Governor in Council approving of any disbarred lawyer.

Mr. J. A. Taylor: Not this government, anyway.

Interjections.

Mr. Hilton: --that anybody would have to take in making that kind of an appointment.

Mr. Kennedy: On balance, Mr. Chairman, I am for leaving the flexibility.

Interjection: The motion is being withdrawn.

The Vice-Chairman: Just a minute. Mr. Breithaupt, I heard your interjection a few moments ago, and it indicated a shift in your position on this matter. Is it your intention now to withdraw the amendment before us?

Mr. Breithaupt: Yes, I will withdraw the amendment, Mr. Chairman. I think the point has been made and we are clear as to what is wanted, which is the only reason I made it in the first place.

Section 4(4) agreed to.

The Vice-Chairman: Back in the order of clause by clause. We have concluded with section 14.

On section 15:

The Vice-Chairman: There was an amendment, I thought, by Mr. Elston.

Mr. Elston: Dealing with an addition to section 15, section 15(5).

The Vice-Chairman: You indicated adding a section 15(5), and then you have a section 15(4).

Mr. Elston: Yes. That is a misprint; it should have been 15(5). It may be worth while for us to go through the first four subsections in order rather than dealing with 5 first.

Sections 15(1) to (4), inclusive, agreed to.

The Vice-Chairman: Mr. Elston moves an amendment to section 15 by adding thereto subsection 5, which would state as follows:

"Where the complainant is not satisfied with the decision taken by the public complaints commissioner under subsection 1, the complainant may appeal the decision to the board within 15 days of receiving notice of the decision in accordance with subsection 1."

Mr. Elston: The reason I have done that is there is a specific provision set out where the police officer can appeal to the board under section 13 as put forward in subsection 4, and I think we ought to be sure that the complainant has an opportunity of having an appeal process, as well.

Mr. MacQuarrie: Mr. Chairman, the intent of the legislation really was to have a public complaints commissioner acting in the public interest and on behalf of complainants to make sure that their complaints were thoroughly aired, investigated and carried through if he felt they were warranted.

By introducing a procedure whereby each and every complainant not satisfied with the decision taken by the public complaints commissioner could appeal, we could have a situation where the board is sitting almost continually and on the most frivolous of complaints, because when you heard the testimony with respect to the numbers of complaints, it is true a substantial number were solved informally, but it might be that complainants, knowing they have these appeal processes--and complaints being everything from someone steamed up over a parking ticket to the most simple things--would carry them on to appeal, and as of right tying up the board for no useful purpose.

Mr. Elston: If I might answer that, that is one of the arguments we put forward for removing section 14(4) in regard to tying up the public complaints commissioner when he might decide to launch an early investigation, and it wasn't carried at that point.

I might also suggest that we might very well build in a safeguard against having those people who frivolously thought of appealing their decision to the board, by adopting an amendment which I am putting forward later under section 19(18), which would allow the board to award costs to a party to a proceeding in front of the board. I think that would ensure you would not have somebody running to the board out of hand all the time and unnecessarily causing delay.

Mr. MacQuarrie: Would the cost be payable in advance? It would be my fear that with many complaints they wouldn't be in a position to honour and award costs.

Mr. Elston: I don't know. Of course that is the difficulty you get in any appeal process and so far there is no appeal process here, except in the most exceptional circumstances,

which awards a deposit of costs by an appellant before the fact. There are provisions where that can be done. You can ask for security for costs but that is an unusual step. If you would like to build that into the process, I would be pleased to honour that as an amendment to my amendment to be put later on.

I do think the public complaints commissioner, with all due respect to you, Mr. MacQuarrie, is not seen as the vehicle for the complaint. It was suggested by others who appeared, and I understand him to be a person who sits atop the whole situation, looks at the complaint and looks at the police officer and says, yes, there is a problem, or no, there is not a problem.

He does not, as we have heard, have carriage of any of the action on behalf of the complainant. The complainant is still required to have his own people available if he wants to go to the board. I just think if the complainant is not satisfied, he, like the police officer, should have every opportunity of finding out if the complaints commissioner has actually performed his duties. That is the only reason.

Mr. Hilton: Mr. Chairman, I think we just talked about a further appeal. This is a new appeal that is being granted to the complaints commissioner, an appeal that has not heretofore existed in disciplinary matters. It doesn't take away any reviews that may be available to a person in a court if they fall within the requirements of some sort of obvious, unjust performance by the chief in a disciplinary matter.

It provides an appeal that did not exist before, that is, to the complaints commissioner, and it was our thought that there has to be some finality somewhere. If you allow appeals on appeals on appeals in matters of very small consequence, you are going to have the whole process (a) tied up, (b) you are also going to have costs incurred which would not be recoverable even if your amendment on costs were implemented, because there are board costs.

11:20 a.m.

There is the problem of the whole thing and for that reason it was felt that the point of finality on this type of matter had to be with the additional appeal that we were granting, that was to the PCC.

Mr. Shymko: I wanted to have a point of clarification, Mr. Chairman, and I would like to address my question to Mr. Hilton.

Can the complainant appeal before the Ombudsman if he questions the decision? What is the relationship of the Ombudsman's office in terms of the public complaints commissioner?

Mr. Hilton: The Ombudsman is excluded by a specific section in the act. The Ombudsman does not apply to the public complaints commissioner or the board.

Mr. Shymko: Thank you.



The Vice-Chairman: Any other comments or questions by the members?

Mr. McQuarrie: I would just like to make a point, Mr. Chairman, that the public complaints commissioner in the spirit of the legislation stands (inaudible).

Mr. Philip: Mr. Chairman, I share Mr. Hilton's concern about not having these things drag on and on. At the same time, I think under the present appointee, the public complaints commissioner, this would not pose a problem.

I guess my one reservation that might incline me towards voting for the amendment is that we don't always know that same person will be in that chair. I agree, it is three years. It may well be at the end of the three years we may have somebody who is less open, who has less of a record and qualifications in this kind of work. Because of the possibility of some other person in that job who may not be of the quality we now are going to have, I would be inclined to vote to at least having this last appeal to a board, assuming that the board then could overrule.

Mr. Wrye: Mr. Chairman, I just would note that I think again this amendment we are offering to section 15 simply balances the appeal procedure that is offered to police officers in section 13 and may simply make this bill a little more palatable to the that section of the community which came before us. I certainly share the concerns that the Deputy Solicitor General has mentioned. I think Mr. Philip's point is a very good one that we may have some problems with the appeal procedure. But this is a pilot project and that can be changed.

I think the important thing is to make this bill appear fair at the outset. While I think there are a lot of areas where it will not appear fair, this is simply one other area where we still do have time to say to the community that it has the same rights as the members of the police force.

The Vice-Chairman: All right. Could we have a recorded vote with regard to the proposed section 15(5)?

Mr. McQuarrie: It should be borne in mind, Mr. Chairman, that the police officer is under the prospect of a lot heavier sanctions than the complainant.

The committee divided on Mr. Elston's amendment to section 15, which was negatived on the following vote:

Ayes

Mr. Elston, Mr. Laughren, Mr. Philip, Mr. Wrye.

Nays

Mr. Kennedy, Mr. MacQuarrie, Mr. Mitchell, Mr. Piché, Mr. Shymko, Mr. J. A. Taylor.

Ayes 4; nays 6.

Section 15 agreed to.

On section 16:

The Vice-Chairman: Are there any amendments with regard to this section?

Mr. Elston: I just have a comment. We got the opinion from our solicitor concerning Mr. Batchelor's suggestions. Are we to be noting those opinions on the record or is this to be filed as an exhibit or whatever?

I just wanted to make sure; I think when Mr. Batchelor was here we led him to believe that we would be considering these in order when we were doing clause by clause. I think it should be noted that, in fact, we are giving him some consideration.

Mr. Hilton: It was my understanding that when this was brought forward Mr. Ritchie made a general statement that, other than two matters that were matters of policy on which he really did not comment, on matters of law he was contrary to Mr. Batchelor's opinion. Each one would be taken as read then and I presume the whole memorandum can be filed as one.

Mr. Elston: Okay. I just wanted it clarified.,

Mr. Philip: May we assign an exhibit number then to the memorandum and include it in our documents?

The Vice-Chairman: Any objections?

Mr. Wrye: I will move that section 16(1) be amended by deleting in the fourth line after the word "may" the words "after informing the chief of police." It will read, "he may enter a police station and examine therein books, papers, documents and things related to the complaint."

The Vice-Chairman: Do you have that written out, Mr. Wrye?

Mr. Wrye: No, I do not.

Interjections.

Mr. Philip: I am sorry; what are you doing?

Mr. Wrye: I am deleting the words "after informing the chief of police" in section 16.

The Vice-Chairman: Yes, deleting that clause "after informing the chief of police."

Mr. Wrye: If I may speak to the motion. I am persuaded to make this amendment by the comments made by Mr. Borovoy in his appearance before us. It simply gives the chief powers he need not have. And certainly in the extreme position of where the chief of police might be under investigation himself it could cause problems. I see no reason why the chief needs to be informed.

Mr. Philip: I can see why under the present chief of Metropolitan Toronto this deletion might not be necessary. I do not believe he would take any action that might in any way hurt an investigation. However, we must remember that the Association of Municipalities of Ontario has passed a resolution asking that the government develop similar legislation for other municipalities, or allow their opting in.

There may well be a situation where a police chief might be the one who is being investigated or may be closely tied in some way with the staff person who is being investigated. Accepting that the public complaints commissioner may well inform the police chief at any time of an investigation, this amendment gives him the discretion if there is something delicate--where informing the police chief might in some way hurt the investigation--that it not be done. I would support the motion.

Mr. MacQuarrie: Mr. Chairman, I certainly am opposed to this amendment. The Police Act in its present form imposes strict duties on the chief of police in so far as the maintenance of order, documents and all the rest is concerned.

The other thing here is that some police stations are so constructed that in order to get access to the chief of police you have to go through a battery of receptionists, some of whom are fairly well conditioned and fairly bright. One of the things that was pointed out here is that there had to be co-operation between the department management and the public complaints commissioner. I think leaving the clause as it appears in the draft bill would reinforce that co-operation that is so essential to the success of this project.

Consequently, I would urge the committee to defeat the amendment.

11:30 a.m.

Mr. Chairman: If there are no further comments, could we have the vote, Mr. Clerk.

Motion negatived.

Section 16 agreed to.

Section 17 agreed to.

On section 18:

Sections 18(1) to (3) agreed to.

On section 18(4):

Mr. Chairman: Mr. Philip moves that section 18(4) be deleted and that a new subsection read as follows: "18(4). The chairman of the panel constituted under subsection 3 shall be a member of the board who has had training in law, and where possible one member of the panel shall be a person appointed by the board on the joint recommendation of the Metropolitan Board of



Commissioners of Police and the Metropolitan Toronto Police Association, and one member shall be a person appointed by the board on the recommendation of the Council of the Municipality of Metropolitan Toronto, and one member shall be a person appointed on the recommendation of the Canadian Civil Liberties Association."

Would you like to elaborate, Mr. Philip?

Mr. Philip: As Mr. Borovoy and the various community groups have pointed out, the subsection contains a vested interest, namely a representative of the Metropolitan Toronto Police Association. What we are attempting to do is to balance that interest. Some groups, I recognize, advocated that the Metropolitan Toronto Police Association simply not be represented. I would rather opt for the addition of someone to represent the other interest groups.

In any kind of decision-making, it is always recognized, be it the labour board or any other body, that all sides be balanced. I suggest to you that we do not have a balance here. It is difficult to appoint someone from "a visible minority group" because there are so many groups and because it would be difficult to find out which group might be most acceptable to all of the community groups--be they visible minority groups or other groups.

Therefore, the one group that appears to have overwhelming support from not only minority groups but also from visible majority groups is the Canadian Civil Liberties Association. I have spoken to Mr. Borovoy on this. While he said he could not endorse the proposal on behalf of the Canadian Civil Liberties Association because there was not an opportunity before we dealt with this to have a board meeting, he none the less agreed with the general thrust of what we were attempting to do in this amendment, namely to have the complainant's side represented.

So I urge members of the committee to go along with this. It is not as though we are picking some organization out of a hat. This is an organization that has a long--

Mr. J. A. Taylor: You are co-opting them without their consent.

Mr. Philip: --history of service to this community and is greatly respected. Mr. Shymko says we are co-opting them without their consent. That's--

Mr. J. A. Taylor: I said that. Chastise me, not Mr. Shymko.

Mr. Philip: All right. Nonsense is coming from Mr. Taylor instead of from Mr. Shymko. The fact is I am sure the Canadian Civil Liberties Association would not object in any way to this. It is just that they have not had an opportunity to have a board meeting to discuss it and there was no amendment before them. In the light of their brief, if you read it, Mr. Shymko--Have you read it?

Mr. Shymko: I have not made any comments.

Mr. Philip: Or Mr. Taylor rather. Have you read the Canadian Civil Liberties Association brief?

Mr. J. A. Taylor: No, I have not. But I am familiar with the organization.

Mr. Philip: If you have read it then--

Mr. J. A. Taylor: Just a minute. I am familiar with Mr. Borovoy as well, and I do not have the same confidence, perhaps, as you do. Furthermore, I do not know how you place yourself in a position to be speaking on behalf of that association.

Mr. Philip: I am not speaking on behalf--

Mr. J. A. Taylor: I am saying if they would be agreeable--

Mr. Philip: I am not speaking on behalf of that association. I can say that this side at least has presented the views of the visible minority groups and of the Canadian Civil Liberties Association, and there have been no groups--

The Vice-Chairman: Mr. Mitchell.

Mr. Philip: I am not finished, Mr. Chairman.

The Vice-Chairman: You are. You are having a debate here.

Mr. Mitchell: I obviously do not want to get into a series of disagreements with Mr. Philip, but if one listens to his arguments carefully the arguments he is making with regard to the appointment of someone representing the civil liberties group in fact argue against that group.

I fear any appointment such as this. Although in the initial stages it may seem quite acceptable to the broader spectrum this bill is designed to assist, after a given period of time there could be a situation where that representation is not being provided. If we were to accept that motion, we would be tying it to a representative of that organization. To that extent, we must have the flexibility to allow the people of the National Black Coalition, or whoever, at least to make a pitch for a position on the board. So I think Mr. Philip's own arguments have gone against the very thing he is proposing.

Mr. Laughren: Could I ask Mr. Mitchell a question?

The Vice-Chairman: It is unusual. I will allow you one question.

Mr. Laughren: Thank you. If you--

The Vice-Chairman: It is for clarification, isn't it?

Mr. Laughren: Yes, it is really that.

If you use that argument then, why do you leave the police association in the section?

Mr. Mitchell: I recall the Metropolitan Police Association themselves indicated it would not likely be one of their members. They themselves indicated some flexibility.

Mr. Philip: If I may ask Mr. Mitchell a further question then--

The Vice-Chairman: No, you may not. You may ask for a clarification.

Mr. Philip: May I ask for a further clarification then? Would the member not agree that before a labour relations board, the person on the labour relations board may not be a member of a trade union? He may simply be a representative of the trade union movement. Why are you so much in favour of having union representation on this board without having any kind of representation from the other side?

Mr. Mitchell: Mr. Philip, I have given you my opinion.

11:40 a.m.

Mr. Philip: This sudden pro-union bias is quite astonishing me.

Mr. Mitchell: You are using the Canadian Civil Liberties Association in the context of being an umbrella group, and I really cannot argue with what you are saying in that regard, but at the same time by putting that in specifically as a civil liberties group you may find that other bodies that feel they are represented by it at this point in time may feel they are not being properly represented later on down the line but they are tied in now to the fact that it has been moved as a civil liberties association representative.

The Vice-Chairman: Thank you for the clarification.

Mr. MacQuarrie: Mr. Chairman, I am opposed to the proposed amendment. The membership of the board has been decided upon in our dealing with earlier sections: a third on the nomination of the police governing authorities and the police association, a third to be members trained in the law and a third to be members nominated by the Council of the Municipality of Metropolitan Toronto. I think that is representative of the group that this bill is designed to serve, and that is the community at large.

The community at large is being represented and I would hope the members they propose for appointment to the board will well and truly represent the public at large, including components of that public at large. I see no reason why we should single out one organization and say we want someone from that on it. Why not have a member from the Women's Christian Temperance Union on it and others?



Mr. Elston: I just have a couple of quick comments, Mr. Chairman. I am afraid that to try and deal with a three-man board, taking into consideration the requirements for representatives from possibly four different areas would be unnecessarily tying up the discretion of the PCC. He is the one who will be composing the board and I think we ought to leave it to his discretion. We have always been of the opinion that he ought to be left as unfettered as possible.

Since we have already provided that one member where possible should be from those appointed by council, one member appointed from the group recommended by Metro commissioners and the police association and one member with training in the law, that ought to be enough restriction on his decision-making capabilities. We will not support it.

Mr. Shymko: Mr. Chairman, I would like to comment with regard to this proposed amendment. With all due respect for the concerns Mr. Philip has for representation of individuals who are concerned with the area of human rights, civil liberties and community relations, I think we will limit the flexibility by simply pointing out one specific organization.

With all due respect to the great work that the Canadian Civil Liberties Association has done, I think it would be prejudicial to a wide spectrum of organizations in this city and this province dealing with the areas of human rights, community relations and race relations.

For example, would there not be someone just as qualified and experienced in such an organization as the Urban Alliance on Race Relations? Why specifically the Canadian Civil Liberties Association? There may be individuals in that particular body who may be just as qualified.

Mr. Philip: May I answer that?

Mr. Shymko: I haven't finished my comments, Mr. Philip. I think there may be qualified people in the Ontario Federation of Labour or various organizations, and we should not simply limit it to one specific organization, not even having received the advice or the agreement of that organization that it would want that type of amendment.

I am positive that organization, for the sake of the flexibility, fairness and equity of the choice, would prefer to leave the municipality of Metropolitan Toronto, which has many co-ordinating bodies, which has advisory bodies dealing with race relations and with community relations, to make that decision. So I would recommend that the clause remain as is.

The Vice-Chairman: Mr. Philip, this is your second time around.

Mr. Philip: I just want to respond to the inquiries of Mr. Shymko.

In the first place, I was just speaking to somebody from the

multicultural council and he made an interesting point. I don't want to quote him directly, unless he wanted me to use his name, but basically what he was pointing out, and he agreed with me, was that the Canadian Civil Liberties Association does not represent the visible minority groups but represents all of the people who may have complaints.

While you may say one group or the other, there is no one single cultural group, I am sure you would agree, that represents all of the subcultures, if you like, or all of the visible minorities, or all of the labour groups. But the Canadian Civil Liberties Association represents the visible minorities frequently, but also the visible majorities frequently. It represents the civil liberties of both labour and management. It represents society's concern for civil liberties.

I agree with Mr. Shymko that it would be impossible to say that this group or that group or some other group should be represented. What we have here is a vested interest on one side. What we were struggling with, and all the various groups that came before us--and I recognize you weren't on the committee and haven't attended on a regular basis, and therefore you may not be aware of this--invariably the groups that were concerned about this bill and about their civil liberties were saying one of two things: either you find some way of adding an extra representative who will be there on behalf of the complainants, or you eliminate the vested interest of the police association.

You can do it in one of those two ways. Rather than deal with it in a negative way by eliminating the police association--because I felt they would contribute in a positive way, the same way a labour union's representative contributes in a positive way on the labour relations board--we would simply add a force to the other side to balance. That is all that this motion does.

If you can think of another association that would represent all of the interests of the majority, as well as the minorities, of labour as well as management, I would be willing to entertain that, but I cannot think of any association or any other group that would act as a balance to the police union.

It seems to me you either come out in fairness to eliminating the union or to adding something to the other side. It is an either-or situation. To leave it as it is is blatantly unfair and I am asking you to seriously consider that.

Mr. Wrye: Mr. Chairman, I am not exactly sure how to go about this so I will just throw out my concern and perhaps the solicitor can speak to it. I asked Mr. Philip whether he was in effect making a fourth member of the board and he said yes. Then I go back to 18(3) where we have a three-member board.

Mr. Philip: I recognize that also.

The Vice-Chairman: There are a number of changes that would flow consequently from the amendment, if it carries, that we would have to go back and deal with.

Mr. Wrye: May I just speak to this for a second? I am not happy with this amendment. I am still trying to make up my mind, because I am not happy with the procedure Mr. Philip has come up with. I am less happy with the board as it is now constituted, and I said so earlier in the hearings. I thought it was badly weighted and I still think so. I am not sure whether a member of the civil liberties association is the solution. I suppose on balance I will vote in favour of the amendment.

Mr. Philip: May I just answer the question?

The Vice-Chairman: I am sorry, I don't think so, Mr. Philip. You have been on three times now.

Mr. Philip: I am simply responding.

The Vice-Chairman: All right. Very briefly.

Mr. Philip: It is quite appropriate for the mover of the motion to respond to concerns.

Mr. Laughren: They cried for help, really.

11:50 a.m.

Mr. Philip: I realize you were caught in that meeting in Ottawa so you may not have been here when the concern was voiced and Mr. Treleaven made a decision on it. He agreed if there was a change later in the bill that would affect necessary changes earlier--Mr. Treleaven is nodding his head in agreement--then that would simply automatically be made. So it is really not a concern.

The Vice-Chairman: I explained already, Mr. Philip, that they would consequently be amended. On Mr. Philip's amendment to section 18(4), could we have the vote please?

Motion negatived.

Mr. Philip: I have a subsequent amendment, Mr. Chairman.

The Vice-Chairman: Is it on the same subsection?

Mr. Philip: Yes. I move that the words, "Metropolitan Toronto Police Association," be deleted from subsection 4 of section 18.

Mr. Elston: Mr. Chairman, just a brief word. I cannot see where that is a functional suggestion inasmuch as what this section purports to do is follow the various breakdown of composition of the board. You remove one half of one of the components of one third of the board and it does not mean anything.

Mr. Philip: I realize that you people have not agreed with any amendment yet. You have voted always against the people then, you might at least--

The Vice-Chairman: We certainly have, we agreed with Mr. Elston's amendment yesterday.



Mr. Laughren: Which one?

The Vice-Chairman: Forthwith.

Mr. Laughren: Oh, forthwith.

The Vice-Chairman: Forthwith. Mr. Wrye didn't even appreciate that when he spoke earlier.

Mr. Laughren: He didn't understand the word novo, that is why he voted.

The Vice-Chairman: Could we have the vote please.

Motion negatived.

Section 18(4) agreed to.

Sections 18(5) to 18(8), inclusive, agreed to.

Section 18 agreed to.

On section 19:

Sections 19(1) and 19(2) agreed to.

On section 19(3):

Mr. MacQuarrie: Mr. Chairman, we propose to add an additional clause to section 19(3) to give the complainant the same opportunity to examine documentary evidence as the police officer before a hearing.

The Vice-Chairman: Could you give us the added wording and then speak to it?

Mr. MacQuarrie: This, in effect, also covers an amendment that the Liberals have proposed.

Mr. Chairman: Mr. MacQuarrie moves that section 19(3) be amended by adding at the end thereof, "and to examine before the hearing the written or documentary evidence or report referred to in subsection 4."

Would you like to elaborate at this time?

Mr. MacQuarrie: Mr. Chairman, this additional clause, as I indicated at the outset, has been recommended for inclusion in the bill to give the complainant the same opportunity as the police officer to examine documentary evidence.

Mr. Elston: Just a housekeeping question, I guess. I was wondering if it might not be more understandable to have amended section 19(4)--

The Vice-Chairman: That's the amendment you have before you?

Mr. Elston: Yes. It is the same result.

The Vice-Chairman: Do you want to consider the two together?

Mr. MacQuarrie: The reason it was put into 19(3) is that 19(3) refers throughout to the complainant and what he can do, and included in that is the opportunity to examine documentary evidence.

Mr. Elston: But I think that 19(4) deals throughout with the opportunity to examine the written and whatever sort of statements are available and documentary evidence. It would seem to be a more tidy suggestion. I am not disagreeing with the content or the merit of it, but just with the placement of it, for clarification. Perhaps these gentlemen here would be the better people to--

Mr. MacQuarrie: To my mind, one subsection deals with the person who made the complaint; the next subsection deals with the police officer, and the rights are given.

Mr. Laughren: We will agree to adopt the amendment in anticipation that you will do the same for our next amendment.

Mr. MacQuarrie: Mr. Elston had an inquiry.

The Vice-Chairman: Plea bargaining again.

Mr. Elston: I wonder, Mr. Chairman, if there is any difference--our people are here who are involved with drafting the bill.

Mr. Philip: Perhaps we could stand the section down and move on and then come back to it.

The Vice-Chairman: I think we can settle that forthwith.

Mr. Laughren: Did you say "forthwith"?

Mr. Ritchie: It is a matter of drafting. Primarily, we considered it a matter of convenience and we combined in subsection 3 a list of the things that the complainant would be entitled to in law.

Mr. Hilton: We hope it is to the same effect as your amendment.

The Vice-Chairman: So there is really no objection to 19(3)?

Section 19(3) agreed to.

On section 19(4):

Mr. Elston: I withdraw my suggestion.

The Vice-Chairman: You are withdrawing your amendment?

Mr. Elston: The one that was suggested.

Section 19(4) agreed to.

Sections 19(5) to 19(11), inclusive, agreed to.

The Vice-Chairman: I believe we have an amendment proposed by Mr. Elston to 19(12).

On section 19(12):

Mr. Elston: I would like to take a bit more time to keep up all these subsections that are being carried so that we can follow through in our material here. I have an amendment with respect to section 19(12).

The Vice-Chairman: Mr. Elston moves that the words, "beyond a reasonable doubt" in line two be deleted and the words, "on a balance of probabilities" be substituted therefor.

Mr. Elston: The reason for this amendment is in keeping with the idea that this is not a criminal board which we are setting up, but a board akin to a labour relations board or many others. We think we should be therefore reducing the standard of proof required to a balance of probabilities rather than staying with the criminal onus.

It is a reasonable suggestion to be made, under the circumstances, particularly in as much as there is not a criminal sanction to be placed as a result of this although there may be some criminal charges laid on a suggestion, and at that time the criminal onus can be put in place and a decision can be made at that point. We think that "balance of probabilities" is the correct onus to be applied in this case.

12 noon

Mr. Philip: This is a recommendation that has been made by the Canadian Civil Liberties Association and by a good many of the community groups that appeared before us. I think it is important in setting up tribunals and quasi judicial groups to distinguish between those groups and courts of law. The Solicitor General or, more particularly, the Attorney General, has been very careful in making that point and the justice committee has been very careful in spelling out the differences between a court, and a board or a quasi-judicial body or, indeed, the justice committee when we occasionally make investigations.

In any other kind of employment situation, the employer does not have to prove court standards of guilt before taking whatever action is necessary to solve a problem. We have even built into this bill methods that would be completely unacceptable in a court of law, of informal decisions even all the way down to handshakes between a complainant and a police officer and an acknowledgement that perhaps they both were wrong. Something as informal as that.

Therefore, when the general thrust is away from a court kind of system and when we have built in as many opportunities for less



formal agreements and decisions than in a court of law, I question that we would suddenly move towards a proof that would be a court type of proof.

If we go this route, I think we are going to end up in very costly hearings. We are going to increase the cost of the investigation tremendously and we are going to complicate it. I don't think that either the taxpayers or justice will be best served by this.

It may well be that in some instances, if we require this kind of proof for this kind of body, the decision then may be that we may as well lay charges as go to this extent under this kind of quasi judicial body. I do not think that is in the interests of the police officer, the complainant or the taxpayer or in the interest of distinguishing between what we are setting up here and a court of law. Therefore, I would support the motion.

Mr. MacQuarrie: Mr. Chairman, the standard of proof in this instance is something that has caused the ministry a great deal of concern in ascertaining whether it should be proof beyond reasonable doubt, the standard criminal test, or on the balance or probabilities as applies in civil matters.

In deciding on proof beyond a reasonable doubt, they took into account not only the impact that findings of misconduct could have on a police officer, his career, his job, his earning capacity and the like, but they also took into account the standard procedures that currently exist in police departments in disciplinary and other matters where the standard practice is that these things have to be established beyond a reasonable doubt. So it was felt to be logical to carry this forward. In view of the consequences to a police officer that could flow from a decision, it was felt fair and reasonable to carry this standard of proof forward in the act.

Consequently, I would urge the committee to vote against the proposed amendment.

The Vice-Chairman: Section 19(12) amendment-- I am sorry, Mr. Hilton, you did have an observation you wanted to make before we vote.

Mr. Hilton: I would just like to remind the members of the committee that Mr. Maloney, in his report, suggested the onus that is in the bill, and in doing so he stated as follows: "There is a long line of authority in which the case of Bahandhari and the Advocates Committee 1956 (3) All-England report, at page 742 is a case in point to the effect that in every allegation of professional misconduct, it is the duty of the tribunal investigating the allegation to apply a high standard of proof and not to condemn on the mere balance of probability.

"That is to say, before a member of one of the professions, such as law, medicine, architecture and engineering, can be dismissed from his profession by order of a disciplinary tribunal within the profession, a complaint against him must be proven beyond a reasonable doubt. There is very good reason that such a

high standard should be required when one considers the consequence that follow to the individual who is found guilty in such proceedings.

"I can see no justification for holding that any lesser standard of proof should be regarded as sufficient in the complaints in the case of a complaint against a police officer."

The Vice-Chairman: Thank you, Mr. Hilton. We will take the vote on the amendment to section 19(12).

Motion negatived.

Section 19(12) agreed to.

On section 19(13):

Mr. Elston: Mr. Chairman, I still think it would be just as well if we tidied up the wording there. The amendment I was suggesting was to remove the words "guilty of misconduct" and substitute "has committed an act of misconduct." I think in that sense it was to have relieved the idea that there was any sort of criminality attached to the ruling of the public complaints commissioner.

It may not be necessary to change it but I am still going to make that motion.

The Vice-Chairman: Mr. Elston moves that section 19(13) be amended by deleting the words "guilty of misconduct" in the second line and substituting the words "has committed an act of misconduct."

Mr. Breithaupt: Perhaps we could hear from Mr. Hilton as to whether that seems to be a better wording, looking at the circumstances in which we hope this bill would operate.

The Vice-Chairman: As soon as Mr. MacQuarrie has spoken I shall open it up to Mr. Hilton.

Mr. MacQuarrie: The wording, as it appears in the draft bill, seems perfectly clear to me. It involves a finding of misconduct on the part of the panel against the police officer concerned. I do not think the addition of the words "has committed an act of misconduct" really adds anything to the section nor changes its meaning at all.

12:10 p.m.

The words, as they appear in the bill, seem to me to be simpler. In addition, I don't know about "has committed an act of misconduct." Does misconduct necessarily imply an act? I do not know. But if you have misconduct by omission and no act at all--

Mr. Hilton: It is our submission that the wording in this section is consistent with wording used throughout in professional-type acts such as this. I refer to section 52(8) of the regulations under the Police Act and I am sure there are other

places where it is similarly found in these regulations. This states: "a person found guilty of a major offence is liable to" and it is also used in the Health Disciplines Act where they are guilty of misconduct. We were just following a consistent legislative practice.

Mr. Shymko: I would add that this is also consistent with subsection 12, where we use a judicial terminology rather than a less-formal terminology. I guess the word "guilty" would be appropriate in following that procedural terminology.

The Vice-Chairman: I can deal then with the amendment to section 19(13)?

Mr. Philip: We might as well set up a court system then and forget about the bill.

Motion negatived.

Section 19(13) agreed to.

The Vice-Chairman: Mr. MacQuarrie, you had an amendment to section 19(14).

On section 19(14):

Mr. Breithaupt: In subsection 14 we have the same amendment with the same result, Mr. Chairman, so we may as well move on to the next--

The Vice-Chairman: Mr. MacQuarrie has others.

Mr. MacQuarrie: This was an amendment to include suspension without pay (inaudible).

The Vice-Chairman: Mr. MacQuarrie moves that section 19(14) of the bill be amended by adding thereto the following clause:

"(d) suspend the police officer from duty without pay for a period not exceeding 30 days."

Further, reletter clauses (d), (e) and (f) as (e), (f) and (g) respectively.

Mr. MacQuarrie: What this does in effect is it includes suspension without pay as a possible penalty and it fills the gap between the extremes of penalties, namely dismissal and reprimand.

Mr. Philip: Why 30 days? Why is 20 days not adequate? I think 20 days without pay is a pretty heavy penalty for someone.

Mr. MacQuarrie: It depends on how you calculate your days.

Mr. Philip: I do not know what a police officer gets paid a day, but I would imagine you are probably talking about \$2,000 for 20 days.



Mr. MacQuarrie: Are these working days or calendar days? This is calendar days.

The Vice-Chairman: Calendar days. It is a discretionary matter in any event I understand, Mr. MacQuarrie. They could be suspended one day up to 30, is that correct?

Motion agreed to.

Section 19(14), as amended, agreed to.

The Vice-Chairman: Mr. Elston, are you withdrawing your motion?

Mr. Elston: I am not making that. It would just be a waste of the time of the committee.

I had earlier submitted an amendment which dealt with compensation, but I had substituted this morning an amendment to section 19 and I so move it.

The Vice-Chairman: Mr. Elston moves that section 19 be amended by adding the following subsection:

"19(18). The board may make an order which awards compensation to a party to the hearing in the form of damages of a general or special nature and costs."

Mr. Elston: The reason I think that should be dealt with is, we have a provision in here that says the Metropolitan Board of Commissioners of Police may pay the costs of a police officer who goes before the board. I think that is fine, but I also think the board should not always have to make the payment. If it is found by the board that the action was taken by the complainant by going through the proceeding in front of the board unreasonably then he ought to bear some of the cost of proceeding.

I think also if it is found the complainant was right in dealing with the process and going through to the hearing at the board and had to get legal counsel to help him through that, he ought also to be compensated for that process. We must be aware that it could be very costly for him to engage a solicitor or an agent of some sort to attend with him in front of the board and go through the hearing process and to review all the evidentiary material which must be submitted. I think it is only fair that there should be costs open to either side of the proceeding. It is a reasonable point to be considered by the committee.

Mr. Laughren: I am still confused. If the vote was called at this point I would not know what to do because I do not understand. I tried to listen but I do not understand the amendment, I am sorry.

Mr. Elston: I'm saying we should just give the board the power to award costs to a party to a board hearing.

Mr Laughren: To anybody?

Mr. Elston: To anybody.

Mr. Mitchell: Where would the cost come from? Are you talking about an Ombudsman's sort of fund to pay this?

Mr. Elston: In my perception I think they would make an order against a person. In other words, they would order the police officer be disciplined and that he pay the cost of the complainant, or that the complaint be dismissed and the complainant pay the cost of the officer. I think if we say they can make an order as to costs they would determine where that money would come from.

If we are having a hearing system we ought not to put an unfair burden on somebody to meet the onus. I think this deals partially with the concern raised earlier by Mr. MacQuarrie about the process being overburdened to a certain extent by hearings. I think it is a reasonable suggestion.

Mr. MacQuarrie: There is no question, Mr. Chairman, but that Mr. Elston's proposed amendment has some superficial appeal, but you have to bear in mind the status of the parties at the hearing.

We have, one, the police officer who is under investigation and under charge. The hearing is really directed against his alleged misconduct. We have the public complaints commissioner who has carried out detailed investigation and has decided there is enough evidence, shall we say, to warrant the hearing. Then we have the board sitting there.

If you refer to the earlier subsection of this section, the board may appoint counsel. As I see the hearing operating that counsel would be carrying the complaint. The complainant could have his own counsel there to assist, but at the same time, in order to obtain a full, open and fair hearing, the complainant really does not need legal counsel, as I see it.

Mr. Breithaupt: Mr. Chairman, I do not think it is appropriate to decide what the complainant might choose to have. If this amendment carries there is the knowledge that the ultimate result could be a responsibility for costs. I think that is a healthy approach.

I think if we have gone through the public complaints commissioner situation where there is reasonable grounds for something to be considered we are not unlike a grand jury approach which says, "Yes, it looks as though this matter should go further."

12:20 p.m.

While counsel can be appointed by the public complaints commissioner, I still think it would be better to deal with the problem of the unwarranted complaint which may look great at first blush but if proven to be unwarranted that some responsibility should properly be there.

Similarly, while the board of commissioners may pay certain costs they are not obliged to because they have to look at what is appropriate in that case. I just think it should work both ways. I think the amendment would set a good tone within the operation of the board. I would hope it would be accepted.

Mr. Laughren: Once again I would have to ask a couple of questions for clarification, Mr. Chairman. What is the status quo? If there are no changes would--

Mr. Elston: The board would have no right to order costs.

Mr. Laughren: So who pays the costs?

Mr. Elston: Each individual would pay the costs--the police officer or the board of commissioners if they decided for the police officer, or the individual complainant presumably.

Mr. Laughren: If the bill remains the way it is everybody appearing who had costs would have to pay them themselves.

Mr. J. A. Taylor: Except for the police officer.

Mr. Elston: Legal aid does not apply.

Mr. J. A. Taylor: He may be reimbursed, eh?

Mr. MacQuarrie: Yes, he may.

Mr. J. A. Taylor: Then he has the edge in terms of costs.

Mr. Laughren: So in this case, if this amendment goes through, it would mean the board could say, "This was very legitimate, whether you win or lose, and we will pay your costs."

Mr. Breithaupt: No, the other party should pay your costs.

Let us take the situation where the constable was clearly wrong, and it was proven that he did something that was most inappropriate and he is going to be disciplined. But he has been able to get through the system and put a good light on it and he is found to be guilty. The person who complained against him is going to have to pay his own costs.

In fact, the costs of the constable could be paid by the police commissioner. I would think, if he was proven to be entirely wrong in his actions they would likely not do so but they could.

I think the complainant would say: "Here, I was right all the way and I am burdened with all my own expenses besides. That is not fair." All the amendment says is the board can view that and make a decision if they wish to.

Interjection: They do not have to.



Mr. Breithaupt: But if they wish to, and they say this person has been put to costs which are excessive for his status or his income, it is only appropriate that he recover something, there is the opportunity there. I think that is good.

Mr. Laughren: Could I finish, please? What is still bothering me, though, would there be a possibility of someone in the community who has a problem being intimidated by the possibility of having new charges assessed against that person?

Mr. MacQuarrie: That is right.

Mr. Laughren: That is the fly in the ointment that is bothering me. The first half of your argument wins me over, but then there is this part of it that bothers me. I can see it discouraging people, many of whom will have not much of an income, I suspect, and would have problems.

Mr. Elston: I guess you would have to remember that before the complainant can even get to this stage he has to win over the public complaints commissioner. There has to be some strong evidence available, I presume.

With respect to the police officer he has a right to appeal as soon as there is a disciplinary finding made. I think if he is dragged unnecessarily through a process by a complainant and we somehow find out later at the board hearing stage that the material was not available, the police officer should not have to pay his costs and the board of commissioners should not have to pay the costs for this unnecessary hearing.

I think it is a way of making sure the individuals determine their cases very thoroughly before they start resorting to this board.

The Vice-Chairman: (Inaudible) the purpose then, Mr. Laughren?

Mr. Laughren: I think so, but they do not always know.

Mr. Philip: I will not vote for this because I have some real problems with it. I have the basic philosophical problem with it that again we are not setting up a court of law but rather a body that is supposed to encourage the handling of matters in as gentlemanly a way as possible and at as early a stage as possible.

In the case of a long-drawn-out procedure which might happen, if the officer is proven innocent--I do not like the words "proven innocent" because again that gets into court terms, but if the complaint is found not to be well-founded, then the police commission will surely pick up the costs of the officer. This has been done in the past, even in circumstances where someone might question whether or not they should have because somebody got off on a technical argument while admitting to many of the wrongdoings.

Mr. Breithaupt: The old Scottish verdict of not proven.

Mr. Philip: On the other hand, I can see the situation

developing where somebody goes to a lawyer and says, "I have this situation against this officer but I am really not in much of a position to go forward," and the lawyer says: "Oh, you don't need to worry about this. You have an airtight case. We are really going to sweat these guys up because you are going to get costs anyway."

The Vice-Chairman: Mr. Philip, just before you continue, we are at 12:30 of the clock. Is it the wish of the committee to continue until we complete dealing with this amendment?

Mr. Mitchell: I think (inaudible) Mr. Chairman, because it is quite a change from the original amendment proposed by Mr. Elston.

Mr. Philip: May I just finish my argument, Mr. Chairman?

The Vice-Chairman: There is a motion to adjourn rather than to complete disposition of this amendment after Mr. Philip has concluded his remarks. Then we will reconvene at the regular hour of two o'clock.

Mr. Philip: So I think it might encourage the handling of something like this at a later stage rather than at an earlier stage. Again, that is going in the opposite direction==

Maybe I should complete my arguments afterwards since people seem to be more interested in talking than listening.

The Vice-Chairman: We stand adjourned until two o'clock. I think there are a number of members who want to speak on this thing.

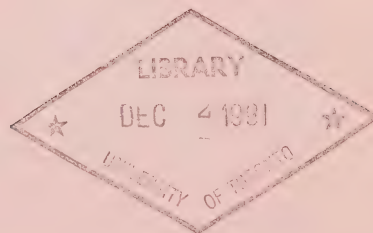
The committee recessed at 12:30 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
THURSDAY, OCTOBER 8, 1981  
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:  
Hilton, J. D., Deputy Minister  
Ritchie, J. M., Director, Legal Branch

From the Ministry of the Attorney General:  
Anderson, W. R., Registrar of Regulations

Also taking part:  
Hennessy, M. (Fort William PC)

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 8, 1981

The committee resumed at 2:13 p.m. in committee room No. 1.

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT  
(continued)

Resuming consideration of Bill 68, An Act for the establishment and conduct of a Project in the Municipality of Metropolitan Toronto to improve methods of processing Complaints by members of the Public against Police Officers on the Metropolitan Police Force.

Mr. Chairman: Gentlemen, we have a quorum. We even had Mr. Laughren here a moment ago. I believe we have a proposed addition to section 19(18). That is a Liberal motion. Mr. Philip was in the midst of discussing this. Mr. Mitchell, would you go ahead in the absence of Mr. Philip?

On section 19:

Mr. Mitchell: Mr. Chairman, I think it is fair to say that when the motion was initially proposed, a number of my colleagues looked at it with a very favourable eye, but some of us had the opportunity to rethink it over the noon hour. I quite honestly feel that if we add that section, although it may seem to be quite honest and what not on the face of it, what it could effectively do if a complainant was aware that he could face paying costs--whatever that might be--is act as a deterrent to that complainant filing a complaint. For that very reason, after some very serious second thoughts, I would urge the committee not to support it.

Mr. Elston: If I may, Mr. Chairman, the reverse of that argument is also true. If the complainant felt that in going and prosecuting a valid complaint he might not have to bear the total costs of putting justice before the board, he might very well be encouraged to make that stand. I think that is the other side of the argument. I recognize what you said and I think you should also consider that aspect of this as well. I just wanted to bring that to your attention.

Mr. Mitchell: As I say, we were looking at it very favourably. I tell you that in all honesty.

Mr. MacQuarrie: I would adopt the arguments put forward by Mr. Mitchell as one reason for voting against the proposed amendment. Another reason is that it tends to complicate the bill in terms of where to award costs. There has to be an avenue of appeal. Costs and the quantum of costs would be at the discretion of the board and there would have to be avenues of appeal specified involving additional costs.

Mr. Elston: Why would there have to be on anything that is taxed?



Mr. MacQuarrie: You could go to the taxing, I suppose. They award the quantum of costs usually when they award costs on boards. I know the Ontario Municipal Board in a few instances has specified amounts. Sometimes they order costs as taxed, but it is usually in specified amounts.

Really we are complicating the situation and we are not accomplishing anything by it. As has been mentioned, there is the prospect of it being used to discourage complainants from pushing complaints, discouraging them from coming forward, if there is a ground of complaint. At the same time, the carriage of the whole proceeding is in the hands of the public complaints commissioner up to the point where he appoints the board and then the board appoints counsel, so you have costs allocated in a variety of directions.

I tend to agree with the concerns voiced by the NDP and by Mr. Mitchell.

Mr. Laughren: In view of this devilish amendment, which has put us on the horns of a dilemma and caused some anguish among us, Mr. Elston should either be censured or purged from the committee.

Mr. Elston: For encouraging some thought.

Mr. Laughren: It is a very tough decision to make. I regret it couldn't be an amendment that would have removed those two edges that are in it. I have concluded I would rather leave things the way they are than change them.

Mr. Wrye: Very briefly, I am sorry to see that the NDP has abandoned the people on this matter as well. I find it incredible that we have a system where one side is in effect offered the possibility and, indeed, if the history of these things comes through, the likelihood of having its legal costs paid, while the other side, having had no right of appeal, having had really very little in this bill, is now even told to go to a hearing and hope that the counsel which assists the board will be its counsel as well. I find it nothing short of amazing and I just hope you are right.

Mr. Laughren: I heard you were going to assess the people extra costs to eliminate them.

Mr. MacQuarrie: If I could possibly direct the attention of the members of the committee to section 60(6) of the Health Disciplines Act dealing with medicine, there is the question of costs in that particular act. It says: "If the discipline committee is of the opinion that the commencement of the proceedings was unwarranted, the committee may order that the college reimburse the member for his cost or such portion thereof as the disciplinary committee fixes."

When you turn to the Law Society Act, you get the same provision. In fact, there is no mention of any complainant or complainant's costs.

2:20 p.m.

Mr. Chairman: Mr. Philip first, then Mr. Elston.

Mr. Elston: I wonder if I could answer that.

Mr. Chairman: As a supplementary or as clarification?

Mr. Elston: As a clarification, if I might in relation to those submissions by Mr. MacQuarrie which come directly to the amendment's being. I recognize those provisions from other acts, but I would have to suggest that the complainant in those situations does not have the same sort of status as the complainant in our situations does.

The complainant under those other two acts which Mr. MacQuarrie brings to our attention may very well be asked to attend, but he is certainly not required to have counsel appear on his behalf. In many instances all he is required to do is initiate the complaint in writing and he may never even attend in front of the board. I don't think it is analogous to our situation where we have a board making a determination. I think we ought to look at the submission of Mr. MacQuarrie on those particular acts in that light.

Mr. MacQuarrie: It is my understanding that the complainants in those instances, in addition to being questioned by investigators, are also quite frequently called before committees.

Interjection.

Mr. MacQuarrie: They could have their own counsel.

Mr. Philip: Mr. Chairman, we have set up a mechanism whereby complainants can have counsel, advice and assistance from the very process that we are initiating with this bill. This is not a court of law. We are trying to make it as simple and as accessible to ordinary people as possible. I suggest to you the mere fact they could have costs awarded against them will be an intimidating factor to a lot of people.

If we had an Ombudsman system whereby if every complainant did not have his case awarded to him under the Ombudsman and costs were awarded against him, how many people would you find going to the Ombudsman? We don't have a system under the Health Disciplines Act whereby punitive measures can be taken against the poor, sick person because he wasn't able to prove his case. Somebody appearing before the Workmen's Compensation Board doesn't have costs awarded against him if he happens to be unable to substantiate his claim.

I say this will go against the applicant for assistance rather than in any other direction. I think all along the government has put in amendments and clauses that makes this too judicial and too courtly, if you like. This amendment by the Liberals is merely taking it one more step in that direction. It is a regressive step and is in the opposite direction to which they have been arguing throughout the bill.

Mr. Chairman: Mr. Hilton, do you have a clarification?

Mr. Hilton: I was merely going to say that in considering whether costs should be in or out, this has been something we have thinking about for a long time. Whether it would act as a detriment to somebody coming forward or might be an extreme burden on somebody against whom there was a finding, it has and would, in our view, be perceived to be such. That is why it is not there.

Mr. Elston: Let's have the question.

Motion negatived.

Mr. Chairman: The motion for amendment is defeated seven to three. There appear to be no further amendments with regard to section 19.

Section 19, as amended, agreed to.

On section 20:

Mr. MacQuarrie: Mr. Chairman, I have an amendment to section 20(3).

Mr. Chairman: Mr. MacQuarrie moves that section 20(3) of the bill be struck out and the following substituted therefor.

"(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under section 19(14), or on both the question and the penalty."

Mr. Breithaupt: Mr. Chairman, from reading that and thinking I understand what is wanted, I think that the "the" in the second last line should be "that." It should be "on both that question and the penalty," because the question referred to is either a question of law or a question of fact and law. I think it should be "that question and the penalty."

Mr. MacQuarrie: Could we have a comment from counsel on that?

Mr. Philip: Supposing we get both counsel in a room, then Mr. Breithaupt and counsel can sort it out before we stand it down.

Mr. Laughren: We may get three different opinions.

Mr. Chairman: Does legislative counsel have a comment on Mr. MacQuarrie's suggestion?

Mr. Anderson: My comment is it is intended as drafted or it would not be here in that style. I do not think there is a specific question referred to. When you say "that," I think it becomes more specific than "the". I suppose I could take up your argument, Mr. Breithaupt, and say "that penalty" also was wrong. I see nothing wrong with it. I do not think it is going to be confusing to anybody.



Mr. Chairman: Any other comments with regard to the amendment of Mr. MacQuarrie's?

Motion agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

On section 22:

Mr. MacQuarrie: I have an amendment to section 22, Mr. Chairman.

Mr. Chairman: Mr. MacQuarrie moves that section 22 of the bill be amended by adding thereto the following subsection:

"(4) No oral statement, answer or submission referred to in subsections 19(10) and 19(11) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this act or in a disciplinary proceeding under the Police Act and the regulations thereunder."

Mr. MacQuarrie: This amendment simply protects oral statements from use in other proceedings in the same way as written documents are protected.

2:30 p.m.

Mr. Breithaupt: Does that require the addition to any protection that the Ontario Evidence Act would give?

Mr. Chairman: Does the legislative counsel have an answer to Mr. Breithaupt's question?

Mr. Anderson: I think that should come from the solicitor for the ministry.

Mr. Breithaupt: The Ontario Evidence Act would not give the kind of protection you are seeking here. I do not know that it would, but I was just wondering what the situation was.

Mr. Ritchie: No, it would not in my opinion. There is something in the Statutory Powers Procedure Act that would apply to protect the statements made in hearings, but here we are talking about statements made outside of hearings and, therefore, there is no law on the point.

This amendment is based on the recommendation of Mr. Borovoy of the Canadian Civil Liberties Association that subsection 3 was deficient in that it only referred to written documents and that it should be extended to oral statements as well.

Mr. Chairman: Are there any other comments with regard to Mr. MacQuarrie's amendment?

Motion agreed to.

Section 22, as amended, agreed to.

Sections 23 to 26, inclusive, agreed to.

On section 27.

Mr. Chairman: Mr. Philip moves that the following words be added to section 27:

"Upon repeal a detailed report on the operation of the project during its three years of existence shall be prepared by the board and forwarded for consideration by the council of the municipality of Metropolitan Toronto and by the justice committee of the Ontario Legislature."

Mr. Philip: The purpose of this, Mr. Chairman, is to ensure that a full evaluation be done by the municipality of Toronto, which this bill is designed only to serve, and also by this Legislature which has set up this bill as a pilot project. I hope that this will be acceptable to the Conservative members of the committee who have argued all along that the reason why they would vote for such an imperfect bill was that it would be reviewed at the end of three years. I am simply building in that review process which, I am sure, would meet with their earlier arguments.

In a sense, what I am helping them to do is keep their promise, so to speak.

Mr. Elston: Mr. Chairman, I would like to draw the attention of the members of the committee to a suggested amendment that I have prepared as well which might, I think, most reasonably be considered along with Mr. Philip's amendment. I know I cannot technically put the motion when there is one on the floor, but I have a concern that perhaps there ought to be a move made to commence a study just prior to the termination of the operation of this board so that we could be in a position to have amendments made to the act and perhaps extended in a more perfect form before the expiration of the three-year period.

I think it would be better served if a study could be made by a body independent of the board that was functioning over the three-year period. This could then be referred back to Metropolitan Toronto council and then again to this committee so that we could in effect assess in a reasonable way the operation of this pilot project.

The idea of having an independent body look at the system is consistent with having an overview of how it functions and operates. We could then obtain a clear focus as to the feeling of the people who had gone through the whole process, the people who had made complaints that had been dealt with and the officers who had also been dealt with during the complaint procedure.

Probably this would give us a little bit of lead time. I can well appreciate that under Mr. Philip's proposed amendment we could deal with it later if the Lieutenant Governor in Council decided to extend the current bill for a further period of time during which we looked at these various reports.

I just think this independent body which I am suggesting would be a better one, although I agree in principle that we must have material brought back before the justice committee and the Metropolitan Toronto council so that we can get a handle on how this project has operated over the three-year period.

Mr. Chairman: Mr. Elston, Mr. Philip has indicated to the chair that he is willing to consider yours as an amendment to his and to work the two together.

Mr. Philip: I think if we substitute "prior to" for the word "upon" it would probably go a long way towards incorporating what you have suggested, which I happen to agree with.

Mr. Laughren: Maybe even three months prior to.

Mr. Philip: Ninety days.

Mr. Elston: You are requesting a report by the board.

Mr. Breithaupt: If I may, Mr. Chairman, I think a report prepared by the board, which would then be considered by Metro council and by the standing committee on administration of justice of the Legislature, would probably be satisfactory. I don't really see the need for another person to get involved if there is the opportunity for public consideration before either the Metro council or the standing committee on administration of justice.

I think that would probably be satisfactory as long as we had some sort of review of what has happened in effect before the bill is repealed so that there is an opportunity to continue the bill. I might add I don't really like the idea of repealing the bill automatically. I think it would be preferable that the bill be repealed by a conscious act of the Legislature rather than just by the passage of time.

The House may not be in session. There may be a delay of several months and procedures that are under way are disrupted because the authority is gone. I really think that, while the intention is there for the three-year pilot project, a conscious decision of the Legislature to repeal, based on information obtained after a review, would be the better way to go, but that is entirely another point.

Mr. Chairman: What is your positive suggestion, Mr. Breithaupt? Which of these clauses would you amend?

Mr. Breithaupt: I would simply take Mr. Philip's clause and say "before repeal," and then I would make a correction in the last line "by the standing committee on administration of justice of the Legislature," but that is just a correction. That would be what we would like to see happen in the sense that there will be a review and we will have a chance to look at it, but before the act dies, so that there isn't a gap if this matter is to be improved upon and continued.

2:40 p.m.



Mr. Chairman: By Mr. Philip's wording an additional matter is that not only is the study made but a report is forwarded before the repeal, whereas in Mr. Elston's it didn't actually force a report to be delivered prior to the repeal.

Mr. Elston: Perhaps, Mr. Chairman, what I might do then is move an amendment to the amendment if I might. Instead of reading "upon repeal," we could have "prior to repeal of the act."

Mr. Philip: I have already incorporated that into the motion.

Mr. Chairman: Perhaps we will have an amendment to the amendment and then the amendment.

Mr. Philip: How about if I reread my amendment? Then that will make it the easiest way. It is incorporated there, but I don't mind an amendment.

Mr. Chairman: What do you say, Mr. Elston?

Mr. Elston: Just to make it clear, why not have him withdraw the amendment he suggested and read in a new one, if he wants to do it that way. That will be fine.

Mr. Philip: I will withdraw my amendment and move that the following words be added to section 27: "Prior to repeal a detailed report on the operation of the project during its three years of existence shall be prepared by the board and forwarded for consideration by the council of the municipality of Metropolitan Toronto and by the standing committee on administration of justice of the Ontario Legislature."

Mr. MacQuarrie: Mr. Chairman, I think the motion as drafted tends to delegate the responsibilities of the Legislature itself. Who is the justice committee to demand a report back to it?

Mr. Laughren: You do find it superficially appealing, though, don't you?

Mr. MacQuarrie: I haven't referred to superficial appeal yet.

Mr. Laughren: You will get to it.

Mr. MacQuarrie: With all due respect, Mr. Chairman, to the opposition parties and the members thereof who are here today, I think they are stirring in an empty pail. This process is going to be monitored and monitored consistently through the three-year project by the public complaints commissioner.

Interjection.

Mr. MacQuarrie: They don't own pails.

Mr. Laughren: If you keep talking much longer the pail won't be empty.

Mr. MacQuarrie: Just a minute. You will have a pail over your head.

Mr. Gordon: Can we fill your pail?

Mr. Philip: There's a song that goes, "There's a hole in the bucket, dear..."

Mr. MacQuarrie: Regulations are going to be passed under this statute specifying and relating to the reporting and publication of decisions, the duties of the public complaints commissioner and the rest. It is quite easy in the regulations to prescribe that regular reports on the operation of the public complaints commissioner's office and of the board be submitted.

I don't see why a detailed report, as called for in the amendment, is necessary. It involves a needless expense and a needless waste of time. We can have a current series of reports to consistently keep us up to the date on how the project is proceeding. I urge the committee to vote against the amendment.

Mr. Mitchell: Mr. Chairman, again I have to admit I didn't see anything wrong with the particular motion except that it would have been my preference to see it read "the Legislature of Ontario," instead of "the justice committee." However, if we go back to section 3(3), it says: "The public complaints commissioner shall report annually upon the affairs of his office to the Solicitor General who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the assembly if it is in session or, if not, at the next ensuing session."

On that premise we do not have to wait three years for a report; we are in fact receiving a report annually. Surely then if it is presented to the assembly, they have the right if there is some argument or discussion to send it on to the justice committee.

Mr. Laughren: That is not what the annual report is supposed to do, decide on the fate of the process. Come on, it is a non sequitur. Hey, how's that--a non sequitur?

Mr. Elston: Mr. Chairman, I have comments to make on Mr. MacQuarrie's presentation. We cannot rely on the regulations being made, as a committee, and I do not think we can speculate on what we cannot have any control over. I think we really should recommend that a study of the entire period be made to us rather than, as Mr. Mitchell suggests, us viewing some statistics which will be forwarded to us on a yearly basis.

I think we should have a report made and be able to deal face to face with members of the board who have gone through the whole process and have established a feeling for the operations of the board, and of the whole process for that matter. I must also suggest that even though we would receive, as a legislative body, a report on a yearly basis that still does not allow the board to come in front of members of the Legislature to present to us in person their reactions and things like this. This would give them that opportunity, as members of the public, to come in.

I just want to add my support to the amendment.

Mr. Philip: Now that I know the Conservatives are not going to vote for my amendment, then I can say what I really think about Mr. MacQuarrie's arguments.

He used the analogy of a pail. The last time I saw a pail being used was at Canada's Wonderland, and it was the seal circus. I notice that they have marching orders on all the amendments to act like trained seals and vote against any amendment--

Mr. Laughren: Throw them another fish.

Mr. Mitchell: In fact, I think you are questioning each member of this committee, not only us on this side, but others, and I resent that, quite honestly.

Mr. Philip: I do not care whether you resent it or not.

Mr. Mitchell: I like to think I have approached this with the same measure of interest that you have.

Mr. Laughren: But not the same degree of objectivity.

Mr. Mitchell: That is for who to decide, Mr. Laughren?

Mr. Laughren: I just did.

Mr. Mitchell: I realize that. If that is the comment, I think it answers itself.

Mr. Philip: It is very obvious by their voting pattern that they have been given instructions that the minister does not want any more amendments. He has absolved himself of having to make any serious consideration of the opposition amendments by not being here and by having somebody who is told to simply argue them down, whatever they are.

Mr. Laughren: Throw him another seal. Throw him another fish.

Mr. Philip: Mr. Mitchell argues that there will be a review under section 3. The fact is that this is a bill dealing with the municipality of Metropolitan Toronto, and surely the municipality of Metropolitan Toronto should have some say and some evaluation of it.

We have argued that what you are setting up is a bill that will not work successfully, and the Conservatives have argued that it is going to be a glowing success. It is fairly obvious that they are afraid of a proper evaluation and that they do not want an evaluation of this bill in a public way. They hope to get around it. If it is not a success, it will be like Condo Ontario that they set up. They spent half a million dollars before this committee, forced that organization on everybody and had it simply die off without any kind of evaluation.

Mr. Mitchell: On a point of order, you are making assumptions. Whatever is stated in section 3(3) is entirely, in my opinion, by reading that, up to the public complaints commissioner.



2:50 p.m.

Mr. Philip: Mr. Chairman, there is no point of order.

Mr. Mitchell: I have finished anyway.

Mr. Philip: I find it very ironic that Mr. MacQuarrie and his seals, they all talk about how successful this is going to be and they all clap.

Interjection: It sounds like Animal Farm.

Mr. Philip: It is Animal Farm. It is Fantasy Island. You believe that--

Interjection: --program on higher levels.

Mr. Philip: Well, if you watched it, you might learn a little creativity and you might be able to see improvements.

Mr. Mitchell: Fantasy Island deals with fantasy, Mr. Philip. Does that say something about--

Mr. Philip: I don't know how he could know what the program deals with, he just said he didn't watch it.

Mr. Chairman: You are through with the floor, are you not?

Mr. Philip: No. I am just warming up, Mr. Chairman.

Mr. Chairman: You have more pearls of wisdom, Mr. Philip?

Mr. Philip: I am being provoked, Mr. Chairman. Every time I am provoked I get more ideas. This could go on for a long time. I have been watching the Premier (Mr. Davis) and I have learned how to handle questions. They had no idea they were actually training me to become Premier some day.

Interjections.

Mr. Philip: Well, I could do a heck of a lot better job than the present Premier can do.

Mr. Laughren: You couldn't do worse.

Mr. Philip: So could Mr. Breithaupt, no doubt. So could a couple of other people. That is why I am supporting him for the leadership of the Liberal Party.

Mr. Chairman, the point I am making is, if you really believe in this bill, then the least you can do is have an evaluation of it at the end of three years. That is all that this does. If you really believe that this is affecting the municipality of Metropolitan Toronto in a very direct way, if you really believe in municipal rights, then you surely want to build into it an evaluation by that body, since this bill is imposing on

it a review of a system that will affect it and is costing it in a very direct sense on a 50-50 basis.

So I say to you, if you are really sincere about all the things you have been claiming, if you really believe this is a good bill, then you shouldn't be afraid of an evaluation and that is all this amendment does.

Mr. Williams: Mr. Chairman, as we come to the end of clause-by-clause debate on this bill it appears that the two opposition parties have clearly been caught asleep at the switch with Mr. Mitchell enlightening the two opposition party members as to the fact the very mechanism they are endeavouring to accomplish by their amendment is already present in the legislation and, in fact, is so much superior to what is being offered by the two opposition parties, that I suggest it is causing some embarrassment among opposition members.

Mr. Philip: Mr. Chairman, I think the only switch he knows is the spotlight at the Zanzibar Tavern.

Mr. Williams: It is to know that here we have built into section 3 the annual review of the activities of the complaints commissioner. All the opposition is asking for is a windup assessment, which is far less suitable from the government's point of view than what we have built into existing section 3. So clearly it waters down what we have built into the bill as a much more sound and ongoing assessment procedure.

I might just conclude by saying that Mr. Philip's behavioural patterns are not different from previous years when he was known to always start off in any committee activities with niceness and flattery to other members. When he feels the points he wants to make are just not being accepted by the majority of the members of the committee, his niceness turns to nastiness. It is most unfortunate.

Mr. Philip: That is unfair. I have only been nice to intelligent ones. I have never been nice to Mr. Williams.

Mr. Williams: I think if he changed his pattern it might add a lot more light to the deliberations of this committee.

Mr. Philip: I have always been nice to the intelligent ones; never to Mr. Williams.

Mr. Chairman: Mr. Wrye.

Mr. Wrye: Come on now.

Interjections.

Mr. Wrye: I just hope that Mr. Mitchell would hold off. Just hold off a second. We have got a couple of others that we are still trying to convince.

I just want to make a point. I don't know what you are reading, Mr. Williams, in this amendment, but I don't remember

withdrawing section 3(3). It is still there, and we are going to have an annual report as far as it goes, but surely the members of this committee would like to have written into this piece of legislation a proposal for a detailed, serious evaluation that can not only go to this committee, which, after all, has studied in some depth for some period of time the setting up of the operation, but also to Metropolitan Toronto, which surely has an interest, and I don't know that anybody from Metropolitan Toronto automatically sits in the Legislature.

I just really think the point that has been made by a number of speakers on this side is that if we are to show demonstrably at the outset that we have a procedure we are going to try to make work, three years later we are going to step back and take a very serious evaluation. Along the way we are going to make an evaluation every year; don't get me wrong. We voted for that, too, but three years later we are going to take a detailed look at what has happened over three years. Surely you can agree to have that along with the proposal that is written into 3(3) and we can have the two in tandem, and surely that will make for a better bill.

Mr. Laughren: I don't mind Mr. Williams voting the way he is told to vote--I understand the process around here--but to use the argument that because section 3 is there, there shouldn't be an evaluation of the process before the whole thing dies, because of the sunset clause, makes no sense at all. It is not even an accurate argument. It has nothing to do with section 3 whatsoever, absolutely nothing. You will recall, as Mr. Wrye pointed out, everyone supported section 3(3), which dealt with the annual review.

All we are saying here is that before this whole thing comes to a grinding halt because of the sunset clause, we should be allowed to take a look at it and at that time make recommendations on amendments or whatever, whatever the case may be at that time.

I don't see why the government members are arguing against having a report made to the Legislature, through the justice committee. I don't think we are hung up on it having to be the justice committee. If someone wanted to change it to the Legislature of Ontario, I see no problem with that; but it is the fact that we are going to allow the thing to die without any reference to the Legislature, which I think is a mistake. Let's face it, the process comes from the Legislature, and that is where it should go back before it dies, and I would urge the government members to reconsider that.

Mr. Mitchell: Mr. Chairman, if I may, in response to both Mr. Wrye and Mr. Laughren, I assume that everybody sitting here, and I think it is a proven fact, that everyone here is a legislator.

Mr. Philip: Mr. Chairman, I have a presentation to make to Mr. Williams.

Interjections.

Mr. Mitchell: Section 3(3) is not one that excludes



anything. We are all legislators. It says that the public complaints commissioner will report annually to the Legislature. Surely then, with all of us occupying a seat in that Legislature, if we feel that the type of review you are talking about is necessary, it is quite within the purview of any member to move a motion that this process you are talking about be carried on; I think that is really allowed for in 3(3).

Frankly and quite honestly, I feel what you are doing is creating a duplication which we, as legislators, should be able to accomplish. Look, if you say three years and this causes them to report annually and you decide there is something within that first report, you have limited yourself to three years. I suggest to you the coverage is there and, Mr. Chairman, I leave it at that.

3 p.m.

Mr. Philip: There is nothing under section 3(3) nor in any of the annual reports that requires public hearings. What we are asking for--

Mr. Mitchell: No, but you can move it in the House.

Mr. Philip: What we are asking for is a guarantee that the public will have a right that Metropolitan Toronto will have a right to have input into the evaluation process in three years' time or before the bill is dissolved.

Mr. Mitchell: Again what you should be able to ensure Mr. Philip by moving it in the House; that when the report is tabled it be given to you.

Mr. Philip: What will happen will be the same kind of thing then that happened with Condominium Ontario and so many other things. When it is embarrassing to the government they do not want public hearings and therefore it will not come about.

If you have any kind of conviction that this is as good a bill as you say it is, then you should not be afraid of an evaluation and you should not be afraid of public input.

You have ignored public input all along. There has not been one person from the public that has been in favour of the bill under its present form and you are afraid of that same kind of input in three years' time. That is why you are voting against this amendment.

Mr. Laughren: That sums it up well.

Mr. Williams: Mr. Chairman, on a point of order. Just to set the record straight. Mr. Philip said that no one from the public has supported this bill and it is clear from the transcript that a number of significant witnesses have indeed supported the bill, primarily the Metropolitan chairman and the mayors of the municipalities who have a greater public constituency than any other witnesses that appeared before this committee.

Mr. Philip: Mr. Chairman, on the point of order. Mr. Williams is quite right. I should not have used the word, "person." I should have used the word, "group." As a matter of fact, a brief by Stu Newton which Mr. Williams said was a very courageous brief, from an organization called Positive Parents of Ontario, in fact was--no, it didn't support the bill, it said it went too far, as a matter of fact. I accept Mr. Williams' statement.

Mr. Chairman: You are through, Mr. Williams? Yes, Mr. MacQuarrie.

Mr. MacQuarrie: Mr. Chairman, essentially, what we are dealing with here by calling for a report, when reports are already specified in the act to be made and submitted annually, is attempting to deal with the legislative program of this province and of the government of the day three years' hence. I think that is highly improper and I think that we are being, as a committee, presumptuous.

I must conclude by saying that this committee is extremely fortunate to have myself and Mr. Philip as members. Between us, we know everything. He knows everything except that he is full of hot air and I know that.

Mr. Piché: Mr. Chairman, would you read the motion once more?

Mr. Chairman: Yes, the clerk will read the motion.

Clerk of the Committee: That section 27 be amended by adding the following words:

"Prior to repeal, a detailed report on the operation of the project during its three years of existence shall be prepared by the board and forwarded for consideration by the Council of the Municipality of Metropolitan Toronto and by the standing committee on administration of justice of the Ontario Legislature."

Motion agreed to.

Mr. Mitchell: Perhaps that vote, gentlemen, will cause Mr. Philip to withdraw his comment.

Interjections.

Mr. Chairman: Gentlemen, we are not through with the bill. We can discuss-- Mr. Breithaupt.

Mr. Breithaupt: Mr. Chairman, there is just one more point I would raise with respect to section 27 that Mr. MacQuarrie and the Deputy Solicitor General might consider.

I see that the bill is to be automatically repealed after three years. I presume once the Legislature returns the date upon which the bill is proclaimed might well be, say, December 1. The problem we might come up with three years from December 1 is that the Legislature might not be sitting at that point and, therefore,

procedures under way might suddenly stop and the matter not be revived until a spring session.

I think, therefore, that while we expect this is a three-year project, it might be worth while to consider that the act would be repealed by a further act of the Legislature. This would allow you a couple of months either way in case you might need it. I have just raised the point for your consideration. The matter might well be brought back once the bill is returned to the House, but I think it is something to be prepared for because you might find yourself in a very difficult position where you really expect that this procedure is going to continue once it is been changed around a bit or improved upon and you are suddenly several months without a procedure. I just raise it for your consideration.

Mr. Hilton: Mr. Breithaupt, I think your remarks warrant very serious consideration. However, at this time I don't think we could change the three-year, self-destruct clause, nor would I recommend that it be done because the perception to all who have come before this committee is that it is going to have a self-destruct.

It may be that a more appropriate wording, such as "or as soon thereafter as the House is in session," or something like, to avoid the obvious difficulty that you have pointed out, which I appreciate. It may be at a time when there isn't a House capable of either extending it or passing it in this or some other form as an ongoing program, but I think that can be done in committee of the whole House.

Mr. Breithaupt: I think that is the appropriate thing. It might be that it is sufficient to make a note of this now so that six months before the event something is extended or dealt with as the case may be, but I am just raising the point because I think it would be wise to be prepared for it. It is one of those things which could suddenly be upon you, and in July of that year when the House is adjourned for the summer and may not be back or there may not be time to get a bill through or have the hearings after the third annual report, which obviously must have been completed before the House could see it, you just might find yourself in a bind. I just raised it for that reason.

Mr. Hilton: There might be some sort of a constitutional argument going on.

Mr. MacQuarrie: Mr. Breithaupt raises a very valid point, but section 27 does allow for such a possibility when it says, "The act is repealed on a day that is three years after it comes into force or on such day thereafter as is named by proclamation of the Lieutenant Governor."

Mr. Breithaupt: You may well be protected, but I just wanted to remind you.

Interjections.

Mr. Philip: I have a point to bring up.



Mr. Chairman: With regard to section 27?

Mr. Philip: No.

Mr. Chairman: May I finish section 27?

Section 27, as amended, agreed to.

Mr. Chairman: Do you want me to finish, Mr. Philip?

Mr. Philip: You finish and then I will bring up just a couple of points.

Sections 28 and 29 agreed to.

Bill 68, with amendments, reported.

Mr. Philip: Mr. Chairman, of interest to some members of the committee will be the fact that on November 2 Professor Allan Grant will be speaking at a meeting held by the Multicultural Council of Metropolitan Toronto at the Prince Hotel on police multiculturalism. I have been told that members of this committee who are able to attend will be more than welcome.

3:10 p.m.

The other matter I would like to bring up is on a point of privilege for Mr. Piché because it is his privileges that have been hurt. I referred to an article in the Globe and Mail this morning in which it appears that Mayor Dennis Flynn, Conservative mayor of Etobicoke, seems to be calling Mr. Piché a liar, and he uses that word. He says, "That is a lie."

Mr. Piché had kindly brought to the attention of this committee that Mr. Godfrey had indicated this bill as written had the support of Metro council and that this was not the case.

Mayor Flynn says: "'That is a lie,' Etobicoke Mayor Dennis Flynn said in an interview at city hall. As deputy Metro chairman, Mr. Flynn appeared before the committee with Mr. Godfrey. Both men are members of the Metro Board of Police Commissioners."

Farther down it says: "Mayor Flynn said that the context of Monday's committee hearings made it clear that Mr. Godfrey was talking about the general concept of a civilian review board and not an endorsement of the bill itself."

In fact, as Mr. Piché was astute enough to recognize, that was not the case. The question in Hansard for Monday reads as follows:

"I ask the question, would you name one community-based group that is in support of the bill as it now stands if a majority of people out there really are in support?" And Mr. Godfrey answers, and I quote: "Yes. The Metropolitan Toronto council, representing 2.2 million people." That is a clear indication that Mr. Piché is right, that the mayor of Etobicoke is wrong, and I think the record should show that.

Mr. Chairman: Thank you, Mr. Philip. Mr. Piché, do you have any comment?

Mr. Piché: No comment.

Mr. Chairman: The deputy minister has a comment with regard to an act.

Mr. Hilton: Mr. Chairman, I inquired of the minister as to whether or not he had a copy. We had ascertained that we had never received a copy of the AMO, the letter you were good enough to bring before the committee. There has been no such letter received in the ministry of the Solicitor General. An inquiry was also made as to whether such a letter had been received in the Ministry of the Attorney General, because sometimes the mail does get in the wrong spot. No record of any such can be found there.

The minister then took the trouble of getting in touch with the Ministry of Intergovernmental Affairs, and they looked for the letter. They said they knew something about it but they could not find any such letter, nor had they any record of forwarding it on to either of the other two ministries.

The minister said to me: "I had heard something about it. I had heard from somebody personally that they had passed a resolution wanting the right to opt in"--which right has not been given. But he said, "No one, so far as I know, has ever told me about their concerns about the police investigating the police."

I thought I would give you the benefit of that explanation.

Mr. Breithaupt: That is good to hear, Mr. Chairman. Absolutely nobody knows what is going on.

Mr. Philip: If I may add to the information, the motion that was carried by the association came from the city of Windsor. In July when the motion was tabled, a carbon copy was sent, as I understand, to the Municipal Affairs secretariat. Then when the resolution was passed at the meeting of August 23 to 26, a copy of the completed motion was sent to the Municipal Affairs secretariat in the first two weeks of September.

So, there was certainly ample time. It is the understanding of that body that the Municipal Affairs secretariat has the responsibility of supplying their resolutions to the appropriate ministry. If that has failed to happen, then there is a breakdown in the communications within the ministries.

I would also like to point out that I am told there were representatives from all the interested ministries at the meeting of August 23 to 26 at which time this was passed. I do not know whether the Solicitor General's ministry was represented or whether the Attorney General's ministry was represented there, but a number of ministries were at that meeting. So obviously there is some breakdown in government communications. I have also been informed by a reporter that the minister admitted to knowing about the resolution before the committee sat yesterday.

Mr. Hilton: What the minister knew about was that which I told you--that he had been informed that some municipalities other than Toronto wished the bill to be enlarged so that they could opt in if they so desired.

Mr. Philip: I accept that explanation, but there is certainly a bad communications problem when something as important as this does not--

Mr. Hilton: Mr. Philip, just blame it on the civil service.

Mr. Wrye: Mr. Chairman, I just wanted to add that the matter was brought to my attention late last week and I had intended to raise it at the appropriate moment. It was brought to my attention by an alderman that not only had the opting-in procedure recommended by the city of Windsor been carried by the AMO, but the AMO itself had amended the original Windsor motion to adopt a proposal for the independent review procedure. This was AMO-wide and I find it very disturbing that the ministry was never informed. It does not say much for the way the Ministry of Housing or the Ministry of Intergovernmental Affairs, whoever is looking at the AMO, is treating that body. I am very concerned about that.

I would say that at the time I was informed of that, I asked informally whether the AMO would be prepared to appear before this committee and was told there was apparently some reluctance on their part to appear. I was never able to pursue that matter further. But I do find it very disappointing that such a new body which should perform such an important task is virtually ignored by this government.

Mr. Chairman: I take it that concludes our deliberations on Bill 68.

Mr. Philip: May I say to you, sir, that you handled these hearings very well and that all the members of the committee owe you a vote of confidence from all of us.

Mr. Chairman: Almost as well as the previous chairman would have.

The committee adjourned at 3:17 p.m.





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Publications

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS, 1980:

ASTRA/REMOR

WEDNESDAY, OCTOBER 14, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Bradley, J. (St. Catharines L) for Mr. Wrye  
Swart, M. (Welland-Thorold NDP) for Mr. Laughren

Clerk: Forsyth, S.

From the Ministry of Consumer and Commercial Relations:  
Walker, Hon. G., Minister



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 14, 1981

The committee met at 10:17 a.m. in room No. 151.

ANNUAL REPORT,  
MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS, 1980:  
ASTRA/RE-MOR

Mr. Chairman: Gentlemen, we have a quorum in place.

The first matter on the agenda is Mr. Williams' motion of May 27. For the sake of those who do not have a copy in front of them, his motion was that this committee receive the reports of the Ministry of the Attorney General and of the Ministry of Consumer and Commercial Relations; and that in view of the content of those reports, the committee stay any further proceedings on the matter until its first meeting in the fall sittings of the Legislature, at which time the said ministries are hereby requested to report progress.

The matters referred to in that motion concerned previous, Astra/Re-Mor discussions of that day, although it does not specifically mention those terms.

As chairman, I wrote approximately a week ago, October 7, to the two ministers, reminding them of this motion and requesting their reports. Last night I received a copy of the Attorney General's (Mr. McMurtry) report on the status of the civil actions and criminal prosecutions on Re-Mor Investment Management Corporation, and it is dated today; I received it last night in the House. It has been filed with the clerk, and I believe all of you have received a copy through circulation. Can we make that an exhibit?

Mr. Breithaupt: Mr. Chairman, while I do not think it is necessary to read in the letters of September 25 or the memo of October 8, it perhaps would be useful to have on the record in Hansard just the first two pages.

Mr. Chairman: Fine. Thank you. The first two pages are unsigned. The first page commences: "Civil Actions," and it is underlined: "We undertook to attempt to expedite the civil court cases by agreeing with the claimants to bring a test case before the courts to determine whether the government of Ontario was legally liable to the claimants. The result of the test case would provide guidance for the resolution of all the claims against the crown."

"The test case route was proposed to cut down on the time and complexity of taking all of the cases through the court system. This process was initiated in recognition of the government's responsibility to act justly, not only in its dealings with the claimants but also in the discharge of its responsibility to the public at large."

"Crown law officers have worked out an informal arrangement with a number of the solicitors acting for investors, under which a single court action is proceeding to trial as promptly as possible, while the balance of the claims are temporarily held in abeyance. The crown has agreed to pay the solicitor and client costs of two solicitors acting on behalf on investors in this action, irrespective of the result. All pleadings have been exchanged and the crown is now providing the plaintiffs' solicitors with all relevant documents.

"The productions of the crown are voluminous, both in Toronto and elsewhere, and the solicitors for the plaintiff have started to review the documents and it is anticipated that discoveries of all parties will be held shortly. Certainly the case is not proceeding as expeditiously as we had hoped, but the solicitors for the claimants appear to be satisfied with the manner in which the case is proceeding.

10:20 a.m.

"Because of the amount of documentation and the complexity of the issues, the plaintiffs' solicitors require sufficient time to review all of the documents before proceeding to examinations for discovery. As soon as practicable, crown counsel and counsel for the claimants propose to make a joint application to the Chief Justice of the High Court for a special trial date.

"Attached is a letter dated September 25, 1981, from crown counsel to all counsel acting for Re-Mor investors. The letter outlines the current status of the civil actions."

There follows then the title: "Criminal Prosecutions," which is underlined, and under that is a paragraph: "Attached is a memorandum dated October 8, 1981, which outlines the status of criminal charges."

Attached to that is a letter addressed dated September 25, 1981, headed, "Re: Re-Mor Investment Management Corporation," and signed by T. H. Wickett, counsel, and also a schedule on the letterhead of the Ministry of the Attorney General, Crown Law Office, Criminal, dated October 8, 1981, and it is a memorandum to the Attorney General from Howard F. Morton. QC, Director, Crown Law Office, Criminal: Re: Re-Mor/Astra Trust, Status of Charges, and that is three pages and is unsigned.

Mr. Breithaupt: Mr. Chairman, in regard to this, are we going to look first and make some comments with respect to the civil actions, and then review the situation on the criminal matters, or how do you--

Mr. Chairman: I would have suggested; the other minister involved is with us, and I understand he is going to make an oral statement. Perhaps he would make that statement, and then you could discuss the contents of these reports. But I think they should be taken together because the motion dealt with them together.

Perhaps Mr. Walker might give his report.

For the edification of the minister, before you came in, the motion of Mr. Williams of May 27 was read, requesting the reports of the two ministers. And I have just completed reading the first two pages of the Attorney General's report.

Mr. Swart: Mr. Chairman, can we assume that came from the Attorney General? You noted--

Mr. Chairman: It came from the clerk. The clerk of this committee received it from the Assistant Deputy Attorney General, Blynus Wright.

Mr. Breithaupt: So it was Mr. Wright who prepared this statement. I see, Mr. Chairman.

Hon. Mr. Walker: Thank you, Mr. Chairman.

I guess I am here in two interesting roles, because we are to begin our estimates. We were summoned today for 10 o'clock, but I presume that, for the period of time Astra will be discussed, we have put aside the estimates. So at the end of this discussion, whatever it may be, the Astra/Re-Mor discussion, I presume then we start our 25 hours of direct estimates--

Mr. Breithaupt: Do you mean we have 25 hours more?

Hon. Mr. Walker: Twenty-five hours more; well, then you have Mr. McMurtry for 25 hours, so you will be able to, I suspect, cover some interesting discussion--

Mr. Bradley: We shall be discussing the curriculum of the police college in Ottawa.

Hon. Mr. Walker: Yes? During my period or his period?

Mr. Bradley: We shall find something of equal importance.

Interjections.

Hon. Mr. Walker: The Upholstered and Stuffed Articles Act, I presume, and I have concentrated a fair amount of attention--

Interjection: I am sure you have members who could speak at length on that.

Hon. Mr. Walker: And new ventures into mud wrestling, I suspect, will create--and you will particularly want to talk about that and ball games in the beer park.

Mr. Philip: I believe it is a member on your side who wants to talk about mud wrestling.

Hon. Mr. Walker: Oh yes.

Mr. Swart: Mr. Chairman, could I ask if the Attorney General is going to be here, in case there are questions we might



want to ask him, and commitments we would hopefully get from him on the Re-Mor issue?

Mr. Chairman: He should make himself available if the committee wishes him to be here or finds a reason for him being here.

Hon. Mr. Walker: Yes, he is in cabinet today and would be prepared to come down if there is a particular concern that expands beyond his written report.

Mr. Chairman, I realize there may be a lot of questions that arise. I presume there may be opportunities during our estimates to discuss a number of them, so I suppose we are, in some respects looking at two aspects here. One is our report as it relates to progress. Your invitation to appear today was to report progress. I felt in that our estimates were starting, I might as well come and present a verbal report on what we have done and what our progress has been.

Some of the items have been touched on in previous statements I have made. Other things you will find that have occurred. So I would like to share with you where we happen to stand. We stand ready to discuss any of the matters you might wish to raise. As I have said, if it is not today, there is opportunity within the next few weeks, as I think we will probably be getting tired of each other for the next four weeks, spending every session together.

One aspect is our negotiation with the federal government. It is fair to say we have not had very much success there. Basically, we have had some difficulty in getting the matter discussed with Mr. Bussi res, who is the Minister of State in the finance area of the federal government. He is responsible for insurance matters. This all fits into his domain.

I have had discussions with him by telephone and in person in my attendances in Ottawa. We have had some difficulty getting together this summer, not through want of trying, I must say. He cancelled three different dates that we had set up in July and finally responded to my telex in September that asked for an answer to our original letter of February 24--I believe that was the date--when the receiver sent a letter suggesting a formula by which the matter might be settled. That was the one third-one third-one third arrangement. We were quite interested in that.

Mr. Bussi res sent back a letter which, basically, suggested that they have done all they are prepared to do; that their interests extend only so far as the Canada Deposit Insurance Corporation is concerned; they have no further interest in discussing the matter; and did not think that a meeting would be profitable at this time. I would not like to suggest what he suggested I can do with the matter. But nevertheless I think there is no doubt in anyone's mind where he thinks the matter should be dealt with.

So I would say that on the federal end we have run into what I consider to be a brick wall.

Mr. Bradley: Sounds familiar.

Hon. Mr. Walker: You have heard something like that? Yes, when you are dealing with the federal government--

Mr. Breithaupt: No, we are more familiar with brick walls.

Hon. Mr. Walker: You have been dealing with the federal government a long time.

Mr. Bradley: No, we have been dealing with this committee for a long time.

Hon. Mr. Walker: Oh, I cannot imagine you would say that.

So that is the federal situation. I would be prepared to provide a copy of the letter that Mr. Bussi res sent. He also included a legal opinion that he asked me not to share. The legal opinion is not worth sharing anyway, so I do not think there is any problem. But he did send along a legal opinion. You will find in the letter which I ultimately turn over that he makes reference to the legal opinion. That was one that he hired and paid for and he has the right to do what he wants with it. As I have said, I think you will find no particular value in having it. I am prepared to honour his commitment in that regard. We will supply copies of Mr. Bussi res' letter addressed to me.

10:30 a.m.

The matters I would like to discuss: One is the new computer system. The whole goal of the computer system, as you know, was to provide a system that could be deployed by all of the branches of our government. I rather had the feeling that there were times when, within the Ministry of Consumer and Commercial Relations, there was not full communication back and forth. I think that is what many of you brought out in the hearings last year.

We have tried to address ourselves to that very aspect in the last few months and all of the changes that we have implemented, I hope, will tend to foster the communication and mean that we have a system that in the future, while not obviously foolproof, whenever there is a matter of fraud, I would like to think that it will be as good as any system in North America for capturing this kind of problem and ensuring that we are aware of one side of the road or the other side of the road; both sides.

Mr. Philip: It was action based on communication. It had nothing to do with communication, it had to do with action.

Hon. Mr. Walker: There was some question as to communication and obviously some question as to--

Mr. Philip: There was a red flag out three times, I do not know what can stand out more or what communication centre can make it more noticeable than that.

Hon. Mr. Walker: We are hoping to develop a system that is such that when there is a red flag--

Mr. Bradley: Was it a green flag?

Hon. Mr. Walker: No, a red flag.

Interjection: That is what it turned out to be.

Mr. Breithaupt: That is the new system.

Hon. Mr. Walker: Yes, we have changed the colour of the flags and we think that will go a long way--

Mr. Philip: The red flag in your ministry, I think, must have meant stop.

Hon. Mr. Walker: Yes. I think we are running with different colour flags now.

We think the computer system is a significant move in the right direction and in that regard the new system is being developed by the business practices division. Bob Simpson, who has been before this committee before and who will be in the estimates and is here in the room with me today, as executive director of the business practices division, has been given the responsibility of acting as the lead person in the computer and that is moving ahead in fairly quick form.

We are moving rapidly now into the implementation stages. Funds have been made available and really we have given a blank cheque to Bob Simpson to get that system in place quickly. That system will be fully operational at the earliest opportunity, it has been telescoped in terms of time and the process, which is to be done in four stages, will cost \$350,000.

In order to derive the maximum benefit ministrywide I have asked that division to undertake the job of bringing together the similar computer requirements in the other operating divisions. I am talking about the securities commission, I am talking about even the liquor licence board, but as well, the financial institutions division, so that we can work towards a ministrywide enforcement-oriented data base.

The idea is to have a machine that, when a name comes up, whatever that name may be, if it is Mr. Piché's name, we simply push a button and find out that Mr. Piché might be a director of the 72 companies, has abandoned his diet in the last while, and in fact made application for a mortgage broker's licence in 1978, and perhaps even had some kind of unenviable report on his sheet that might give us some reason to either approve or deny a certification or licence or whatever it might be.

That is an important thing and the securities commission will be able to have direct access by direct terminal. So will every division that will need to. We think this is an important early warning system that will be of real value to us. The representatives from the other areas are sitting on the committee



to oversee the project. As I say, we expect great moves there and I think that is one of the more useful things to come out of all this.

We feel there are a lot of lessons to be learned in the recent affairs and we are certainly going to make sure that we have nailed down the corners and make sure that this kind of thing, to the extent that we can avoid it in future, does not happen.

Mr. Breithaupt: When do you expect this to be in operation, approximately?

Hon. Mr. Walker: By September of next year we should be getting the beginnings of it. It takes a while to bring it all together.

How many companies are there, Murray, is it 640,000 registered companies? Something like that, and when you bring together all of the names of the directors of those, you can imagine that it takes a lot of detail work. We think that, while it will take some time, we will reap immense benefits in the future.

We have something called a supplementary registration, there is something called a name check, for want of a better name. The name-check system or supplementary registration system has proved its value over and over again in the last 14 months. This system is run on a computer by the business practices division and is offered as a service to the financial institutions division and the Ontario Securities Commission.

There are about 1,800 names on the list at the present time and security for the list is extensive. There are nine copies. Revisions are hand delivered to designated individuals in the operating areas. Replaced copies are taken back for shredding and all copies are signed for. Needless to say, our officials are absolutely delighted when situations arise such as a would-be registrant is summoned to a meeting and advised that there is a lot more on our plate informationwise than he or she ever thought would meet our eye. I have asked the division to extend this service to other areas of the ministry with similar registration and enforcement concerns. Naturally, this system will form part of the overall computer system concept and will be dovetailed into the big computer system once that is implemented.

A new check going behind the corporate structures: We trace all corporate structures backwards with the objective of finding all the warm human bodies which exist there. All corporations are asked to file separate applications. All the major players are subject to the police checks, name checks, credit checks and sheriffs' certificates. In addition, we have decided to pursue the histories of employees of mortgage brokers who are involved with the actual arranging of mortgages. There will be some discretion allowed to the registrar to exempt major institutions.

Credit checks, a new computer terminal: In the interests of both shortening our lead time and ensuring that we minimize the

routes that paper has to travel and be generated, we are acquiring an on-line terminal to connect our registration people to the credit bureau systems of Ontario. The terminal will be connected to the computer system of the Credit Bureau of Metropolitan Toronto. Our operators will be able to gain immediate access to the files of prospective and continuing registrants. This system will capture about 90 per cent of the registrants, the balance will continue to be done manually. This will give us a cross-Canada inquiry capability.

Mr. Breithaupt: What will you do in order to correct information that may be in error, for example, a credit report on Mr. Piché that says he is a rascal of some sort when we all know that that is not the case?

Mr. Piché: Better use the name Bradley then.

Mr. Breithaupt: We could even check under his use of an alias Bradley which he does on occasion. There must, I am sure, be some opportunity to check errors, particularly on the part of a registrant who finds that it is not the same John Smith at all. How will you cope with that?

Hon. Mr. Walker: You know that the credit bureaus themselves are under certain obligations to correct and that is provided by law. That will therefore be a self-correcting system in itself. That is what we feed into it. We will rely on their advices, obviously. When a matter does come to our attention that should be corrected, obviously we are going to correct that.

If someone says, "Just a minute, that is absolutely wrong; you are talking about a different person," all he has to do is mention that and we will turn over all kinds of information to make sure that our information is valid and correct. We are certainly not going to attempt to hang someone on the basis of misstated information or improper information.

Mr. Breithaupt: You would go back into the source of that information, where practical, in order to have them correct their records?

Hon. Mr. Walker: That is right. I daresay that we would raise that with them and, if we were to raise it with them, my guess is that they would be very prompt to correct it.

Mr. Breithaupt: Fine. Thank you.

Hon. Mr. Walker: Police checks, the Ontario Provincial Police: The registrant-checking aspect of the administration of the Mortgage Brokers Act continues to progress. Our systems are being constantly re-examined to ensure that we not only seek to check thoroughly but that the procedures go into place to ensure that each check is carried out and someone is accountable for the result.

10:40 a.m.

Police checks on prospective and ongoing registrants are now

done on a 24/48-hour turnaround basis. On a daily basis, a list is prepared in the divisions registration area and sent to the OPP. The list comes back the next day with preliminary indications through a checkoff system of probable situations. This is followed a few days later by a more detailed report.

With respect to enforcement, from June 30, 1980, to September 30, 1981, there have been 1,281 regular inspections in mortgage broker areas. Forensic accountants have reviewed 789 financial statements. There have been 24 in-depth financial investigations. There have been 383 terminations of registration in the past 15 months. Many were marginally active. Some were duplicate registrations. We are now in the process of tracking all the terminations to make sure they are gone. We are about to start a new cycle of regular inspections, confirmation of termination and review of financial statements. We have 20 cases before the courts or tribunals.

I might mention that we have received proposals from the mortgage brokers themselves, the Ontario Mortgage Brokers Association. They have put forward a number of proposals and I would be prepared to go through them, if that is of interest at this time. It may not be, but they have responded to us.

Mr. Breithaupt: I notice the press reports, Mr. Chairman, with respect to their view that everyone should be a member of the association. Their membership is perhaps a quarter or so, or perhaps even less, of mortgage brokers at this point. I do not think we need go into that in depth now; that might come up during the estimates as to the times for moving them into a position equivalent perhaps to the future that the insurance agents are now, but I do not think we have to go into that in depth, other than to note that they are interested in expanding their responsibilities.

Hon. Mr. Walker: Let me just move on to the financial institutions division. Murray Thompson is executive director of that and Murray is with us today. If you are interested in some discussion with them on some of the progress areas, I would be glad to have them come forward at some point and answer some questions. The policy matters obviously have to be directly related to us at the political level, but in so far as direct questioning can go on, there is some value, Mr. Chairman. They are certainly available to discuss it.

The financial institutions division, in conjunction with investigators from the business practices division, has conducted examinations of over 20 mortgage broker operations. The purpose has been to see if these brokers are using agreement forms on mortgage syndications that imply to the public that a trust company is involved or that trust company duties are being assumed. The result is that two cases have been referred to the crown law office for possible prosecutions for violation of the Loan and Trust Corporations Act. These investigations are ongoing.

It is important to eliminate false impressions of security in the minds of the public dealing with mortgage syndications that there is support by a trust company involved. The only corporation



chat can carry on the business of a trust company and hold out such services to the public is a registered trust company under the Loan and Trust Corporations Act.

If you will combine many of these comments with the earlier statements that we have given in the House in late June and back in April, you will see that the lessons--and there are lessons to come out of this entire matter--have been well received and we are moving, on our end, to make sure that we are closing the doors wherever possible. You may see areas that should be closed off or should be altered in direction and I invite you to suggest those. I would be most open to your suggestions and hope that we might be able to take some concrete action in terms of the recommendations.

We have done what we think is necessary within our ministry to make sure, to the extent that we can, that we have curbed the kind of occurrence that happened some time ago about which we are having some of our discussions today, in part.

That, Mr. Chairman, is the extent of my report. I would be glad to report further to you in the future or do as you see fit, whatever meets your interest, the committee's interest at the moment.

Mr. Chairman: Mr. Minister, thank you. There will be other opportunities to keep reminding the members during estimates, which will start tomorrow morning, following today's meeting, and many of these same areas can be covered with the minister.

Mr. Swart: Mr. Chairman, I express appreciation to the Attorney General, and to the Minister of Consumer and Commercial Relations for making the report here, although I would point out that the last part of the report, relative to the changes in the ministry, is something that would normally come under the estimates of your ministry.

It is my understanding that this meeting today was to deal primarily with two items which had been the subject of discussion last fall, last winter and last spring. That was the negligence of the ministry with regard to the Re-Mor issue, perhaps the Astra issue too, and compensation to the victims. That is what I would like to see discussed here for the rest of this period. That is implicit in the resolution that was passed last spring.

I want to say that I have here four motions, which I would like to put at some point during the period we have to discuss this. They are based on the fact that when we meet this fall, we are really no further ahead than we were told we were at last spring when we met at that time. Last spring, we were told that there would be a court case coming before the civil case this fall. We now are told that it will not take place until next spring. In fact, the Premier of this province (Mr. Davis), during the election campaign last spring, said he hoped it would be dealt with before the summer. His statement carried in the Globe and Mail of February 13, 1981, was as follows:

"Mr. Davis said in an afternoon news conference that he is not opposed to comments made earlier this week by justice committee member George Kerr, who said the committee should reconvene to bring the matter to a swift conclusion. However, Mr. Davis told reporters that doing it that way would mean the matter might not be resolved until midsummer and that he was hoping to move things along faster than that"--faster than midsummer.

As I say, we are here in the fall and we are talking about next spring. In Mr. Wickett's letter to Mr. McMurtry, dated May 15, he says, "We have again agreed informally to approach the Chief Justice for a special trial date in late September or late October."

Again, Mr. MacQuarrie, a member of this committee, in a letter dated June 25 addressed to Mrs. L. Barabas, secretary of the executive committee of the Astra/Re-Mor Depositors Association, states: "In the event that matters have not been greatly clarified by the fall, it might well be appropriate for the committee to consider a review of its own," the point we are at now. It might be appropriate for this committee to consider a review of its own.

10:50 a.m.

The resolution itself indicates it expects some action to be ready by this fall. It was the reason for referring it. Mr. Williams' statement in Hansard on page 12 dated May 22, 1981, makes it clear that he expected by fall we would be some place down the road with regard to the civil action, and, of course, we are not. Therefore it is my intention to move these four resolutions.

This committee now, Mr. Chairman, has an obligation to show, one, that the promise given by the Premier last spring during the election campaign is lived up to, and that is "if the negligence is proved, then the investors will be compensated." And that is a quote from his statement and I have the tape of it. Secondly, that there is no prolonging of this case now, that we are not going to prolong this for another six months, another year, another two years, until the investors or many of them may no longer be residents on this earth.

There was an article in the Spectator on September 19 which said, "Investors Dying As Re-Mor Case Stalls." "The delay horrifies Luigia Barabas, secretary for the 167-member Astra/Re-Mor Depositors Association: 'It is terrible. We are going to lose many more people before then,' Mrs. Barabas says. 'We have already lost many. If we were young people we would wait forever. But at least 75 per cent of our members are old. They are at least 70 or 80 years old...' et cetera. Those are her comments about waiting any longer.

This fall we have to take whatever action we can to assure, number one, that compensation is paid in line with what the Premier promised, and secondly, that it is done quickly while these people are still with us, or there will be no meaning to our whole exercise on this issue over the past several months.

I want to point out, although it is not stated in the

Assistant Deputy Attorney General, Mr. Wright's, statement, it is in the letter, that the delay is due largely to the action of the government in refusing to turn over the documents to the lawyers who are acting on behalf of the investors. If you look on page two of Mr. Wickett's letter, you will see that they argued the case back on June 25 and there was not a decision made until August 26. That is two months in itself. We can imagine what led up to that. So the whole thing has been delayed by the government action, in spite of the fact that the Premier promised to expedite this last spring.

Mr. Walker, you indicated in your statement to the House last spring that you were going to proceed with test cases at that time--and you are familiar, of course, with your document which contains these words: "Under this proposal, the Ontario government will pay the legal costs of counsel for Astra/Re-Mor investors in a test case and, by reaching agreement, the counsel for the investors on the facts and issues, the usual drawn out and costly processes that seem to inevitably accompany civil litigation, will be avoided."

Hon. Mr. Walker: That is all happening now.

Mr. Swart: But we were told at that time it was going to be in the courts this fall. Right?

Hon. Mr. Walker: The only thing I say is Mr. McMurtry's comments basically say that--

Mr. Swart: And the Premier's comments, so they would have it done before summer.

Hon. Mr. Walker: No. The point I am making is that the solicitors for the plaintiffs, for the investors, seem to be content with the speed with which it is progressing. I gather that while it may appear to us that it is progressing at a little slower pace than we would want, it is still running at a racehorse speed compared to what the normal case would be if it were in the courts. That would be four years down the way. I guess it is all relative, and the other side seems to be content. They have got to have time. You have to give them time to read over their documents. You cannot force the plaintiffs on without having read the documentation. It took you three months, solidly, to read the stuff.

Mr. Swart: Mr. Chairman, I am aware of the volume of the documents. I am also aware that three months was used in the summer by your defence in releasing those documents; not your ministry's defence but your government's defence. That delayed it three months.

Hon. Mr. Walker: It probably took them that long that photocopy the 45 exhibits.

Mr. Swart: I also have a copy of the defence on which the Ministry of the Attorney General is going to argue the case. I want to say that this defence is an insult to the investors.



Let me put this on record: This is the defence submitted by Mr. Wickett in the civil action of David Baird et al and Her Majesty, the Queen in right of Ontario. Let me read:

"The defendants deny"--the Ontario government denies--"that any action or conduct by the defendant Weinstein or by the servants or agents of the Queen in right of Ontario caused or contributed to the plaintiffs' loss or damages, and the defendants state that if the plaintiffs sustained loss or damage, such loss or damage was caused or contributed to by the plaintiffs' own conduct in that:

"(a) they failed or neglected to make any or adequate investigations of the financial status of Astra Trust Company or of Re-Mor Investment Management Corporation or of C and M Financial Consultants Limited or of Via Mare Ventures Limited or of the principal servants or agents of these corporations;

"(b) they failed or neglected to make any effort to obtain independent advice or information with respect to these companies or any of them or with respect to their principal servants or agents;

"(c) they failed or neglected to take any or adequate steps to ascertain that Re-Mor Investment Management Corporation, C and M Financial Consultants Limited or Via Mare Ventures Limited, or any of them was insured by the Canada Deposit Insurance Corporation, or that their investments would be insured investments under the Canada Deposit Insurance Act; or, in the alternative, they invested their money in Re-Mor Investment Management Corporation, C and M Financial Consultants Limited or Via Mare Ventures Limited when they knew that the investments were not insured investments under the Canada Deposit Insurance Act;

"(d) they failed or neglected to take any or adequate steps to ensure that the money which they invested in these companies or any of them was, in fact, secured by way of mortgage or otherwise, or to take any or adequate steps to ascertain the value of the mortgage or other security; and

"(e) they attempted to obtain the highest possible interest on the investments which they knew or ought to have known required them to accept a higher than usual degree of risk, but they failed or neglected to take any or adequate steps to protect themselves against that higher degree of risk."

That is the statement of the Ontario government about the investors.

Hon. Mr. Walker: You have to realize, that is standard boilerplate language. Jim Breithaupt would realize this. In having framed defence statements, you throw in the entire works, the kitchen sink and everything else in these statements. That is simply boilerplate language.

If you were to go and read any statement of defence in any single action, you would come to the conclusion that the poor unfortunate plaintiff in those defence actions--I am not referring

to this one--if you were to read any of those other ones, you would find that, because of the boilerplate language they use, it smacks of a lot of things that seem strange for the lay person to read, but that is the lawyer-talk nature of our judicial system. I would not get carried away on that one aspect.

Mr. Swart: I am fully aware of that. I am fully aware also of the other arguments which you have not used to this date; I expected you would have, that you want to put up a full and complete defence in case you take action against the federal government. That requires that and I am fully aware of this.

Hon. Mr. Walker: You have put our defence well.

Mr. Chairman: Excuse me, Mr. Swart, might I interrupt for a moment? I assume you are winding up to your first motion.

Mr. Swart: I am winding up. I would like to read into the record the motion so you know what I am going to propose. But, Mr. Chairman, I do want to go on with this other aspect of the federal matter and their obligation.

Mr. Chairman: At this point, we have technically nothing in front of us. We received the report as a result of Mr. Williams' motion that the two ministers report back. They have done so and we have neither a motion in front of us nor estimates. Could you please put one motion on the floor for the technicalities of the matter?

Mr. Swart: I will do that as soon as my colleague who is distributing them brings one back to me.

Hon. Mr. Walker: Would you like me to read it now?

Mr. Swart: I will put my first motion now to be in conformity with your ruling, Mr. Chairman.

11 a.m.

Mr. Chairman: Mr. Swart moves that this committee recommends that the Attorney General seek a ruling from the Supreme Court of Ontario in the action currently before it on the matter of negligence by the Ontario government in the Re-Mor issue; and further that section 8 of the Consumer and Commercial Relations Act not be invoked in determining whether or not compensation shall be paid to the Re-Mor investors by the Ontario government.

Mr. Swart: That brings me just logically to my next point that I was going to make, that in fact the government of this province, in its defence under clause 3, has made the following statement: "With respect to the allegations contained in paragraph 11 of the fresh statement of claim as amended, the defendants state that at all material times the defendant Weinstein and the servants and agents of the Queen in right of Ontario were acting in good faith in the execution or the intended execution of their duties, and the defendants plead and rely upon

the provisions of section 8 of the Ministry of Consumer and Commercial Relations."

You will know that section 8 exempts the government from liability unless bad faith is proven. Let me quote section 8: "No action or other proceedings for damages shall be instituted against a director or any member of the tribunal or any registrar or anyone acting under the authority of such director, member or registrar for any act done in good faith in the execution or intended execution of his duty, or for any alleged neglect or default in the execution in good faith of his duty."

The issue before us at this time is whether in fact there is going to be compensation paid because of negligence, or whether the government is going to invoke section 8, which means that bad faith has to be proved in addition to negligence. I point out once again that the Premier of this province promised that if negligence was proved, compensation would be paid to the victims.

I do not know whether the minister is prepared to state at this time, to give an unequivocal answer to that, whether, regardless of section 8, compensation will be paid to the victims if negligence is proved. I will cause just for a moment in case he wishes to make any statement on that. If you make a positive statement, I will be glad to withdraw this resolution.

Hon. Mr. Walker: No, you cannot ask me to interfere with the chief law officer of the crown. It is the Attorney General's responsibility to deal in that area. At the moment I believe they have pleaded section 8, as I recall. I am not at liberty to either discharge or otherwise reflect on that.

Mr. Swart: So, in fact, you are not prepared. I am hoping the Attorney General then can perhaps be brought before this committee, Mr. Chairman.

Hon. Mr. Walker: It is not my responsibility.

Mr. Swart: No, I realize that.

Hon. Mr. Walker: You cannot ask me to do that sort of thing.

Mr. Swart: I can ask you to do it and you might have consulted with the Attorney General. Apparently you have not and therefore I would like the Attorney General to be brought before this committee.

Hon. Mr. Walker: He has already reflected on that. I think you have his answer on that question. I think he gave that to the House back in June, did he not? Does someone have a copy of Mr. McMurtry's comments?

Mr. Piché: From last spring?

Hon. Mr. Walker: Yes, they are somewhere around here.

Mr. Chairman: I do believe there were statements given



the last week in June by both Mr. Walker and Mr. McMurtry. I believe Mr. McMurtry's was on a Tuesday and Mr. Walker's was the following Thursday, and I would guess that it was the last week of June. They gave formal statements in the House and I believe the Attorney General spoke specifically to this negligence and the finding of negligence by the courts, that being the essence of the test case.

That is my memory. The clerk is trying to see if he can find that statement.

Mr. Swart: I will be glad if he can. My memory is that there was never a commitment (inaudible).

Mr. Chairman: No, there was no commitment on section 8. That was not dealt with, just the first part of your motion about this ruling and the matter of negligence by the Ontario government.

Hon. Mr. Walker: You realize that if section 8 were abandoned, that then removes any right over against the federal government and we have maintained all along that the federal government, given that they licensed Astra Trust, and given that Astra Trust was the vehicle by which 99 per cent of the investors contributed money and thought they were putting money in--given all that, I think we would be derelict in our duty if we did not ensure that there could be a claim over against the federal government for the benefit of the investors.

It is not going to be to our benefit. What I am saying is that, if the investors ultimately secure something, if everything is determined the way it might be, rather than for the federal government, we have got to protect their rights. I think what you are suggesting would thwart their rights.

Mr. Breithaupt: You certainly must plead that, without question.

Hon. Mr. Walker: I agree with Mr. Breithaupt. I do not think we have any question in that area; we would be derelict in our duty. I do not think you would want us to do that, if you really follow it through to its natural consequences.

Mr. Swart: Then the question that automatically follows, the real question: Is this then being used as a defence so that you can take action against the federal government, but will it be waived, as far as compensation goes, to victims so that the Premier's promise can be carried out? That is the key question.

Hon. Mr. Walker: That is the matter that is pleaded before the courts and I think the courts have to make the decision on that.

One thing is for sure; nothing is going to happen on that question until the court case is resolved. The test case is proceeding, as you know. Not everybody is happy with it, but at least the plaintiffs, the investors, the lawyers seem to be happy with the progress that is being made on it and the relative speed with which it is progressing. Given that, we are all going to have

to await the decision of the court to ultimately determine that question.

Mr. Philip: Is there not a statement by the previous minister that in fact the courts would exonerate him and he quoted, as I recall--and I do not have the statement in front of me--section 8 of the act, and that "he would go to the wall" under that section to, in fact--

Hon. Mr. Walker: What was he going to do at the wall?

Mr. Philip: I do not know what the wall is that he was talking about. If he were concerned about section 8, maybe it would be a wailing wall for that ministry, but I think it is a different type of wall than he was talking about. He, like you, was Minister of Correctional Services for a long time. Unfortunately it is the people who have lost their money who are in a jail rather than the people who have taken it.

Mr. Swart: If I can move to another point, apart from this alleged reason that all of this defence is being made so that there can be action against the federal government, and I, for one, have not had any impartial advice that there is any case whatsoever that can be made against the federal government and I would like some impartial advice, and therefore will move at a later point--I will not put it in now--that this committee engage an independent solicitor satisfactory to all parties represented on the committee to advise as to the possibility of success in any action by the Ontario government against the federal government to obtain compensation for loss by Re-Mor investors or reimbursement to the Ontario government for compensation or costs paid by them.

I will be introducing that at a little later time, but I want to put it on record because, if there is no chance of success against the federal government, then all of this defence put up by the Ontario government, tremendous delays with the investors passing away, is nothing but a subterfuge to forget payment to those people and to make a final decision.

Hon. Mr. Walker: I have not seen anyone passing away. I may be wrong on this, but I do not think anyone has passed away as yet, have they?

Mr. Swart: I am going by the quotes of the secretary who said several had died.

Hon. Mr. Walker: It said, "Dozens of elderly investors are said to be dying while awaiting compensation." But I have not heard of any particular one--

11:10 a.m.

Mr. Philip: As I recall, the youngest investor was 35 and the next youngest was 55. Just from your own knowledge of insurance projections, you may be sure that while we would not wish death on anyone, there is a good chance, considering the numbers, that somebody--

Hon. Mr. Walker: I must say I think it is rather morbid that there might be someone around ticking off a list of people who might be getting sick or passing on. That seems to me to be a useless action for anyone to be involved in.

Mr. Philip: I am sure the poor fellow who has lost his farm and is on welfare, the stress may bring about an earlier death if not an immediate one.

Mr. Swart: The next issue I want to raise is what happens after the court case, which may take place next spring? There are certainly two appeals: one to the appeals court of Ontario and one to the Supreme Court of Canada. Is it the intention of the government of Ontario to proceed to those two appeals? Are they going to say that they must proceed to those two appeals if they are going to be able to have successful action against the federal government? If they are, then we know this could be another two or three years down the road before any decision is made in that respect.

Hon. Mr. Walker: I do not think that is going to happen. I accept the advice of the Attorney General that we are looking at a spring action. They have now reached agreement-- The big thing was over the summer that the lawyers involved, both the crown lawyers and the lawyers for the plaintiffs, have reached agreement on how to proceed. That was the biggest stumbling block all through May and June. So I doubt for a moment that it is going to do anything of what you are suggesting, two or three years. That is why everybody is agreeing to a test case. Test cases are the most unusual thing of all. In my knowledge of this government's proceedings, that has never happened before. Does anyone know of any exception to that, where there have been test cases?

Here is a case where a representative class action test case is going forward and the government, the people of Ontario, are paying the lawyers for both sides all the way through the thing to get the test case to produce a result. When that result is before us, on the basis of that decision, which we would hope would be rendered fairly quickly, then we can base the question of negligence as it relates to the balance of the cases.

That has all been agreed. I think the lawyers reaching an agreement is the most phenomenal thing. So I see nothing but speed at the moment.

Mr. Swart: I presume again this minister cannot give a commitment that it will not be appealed by the Ontario government in case it is lost. I have searched the records; I have found no such commitment.

Hon. Mr. Walker: I am pretty sure you will not find an appeal in this kind of case. It would have to be a pretty strange set of circumstances to warrant an appeal.

We want an adjudication of the matter. I think it is fair to say that we are prepared to put our case in the hands of the Supreme Court of Ontario and we are prepared to rely on its decision.



Mr. Swart: I would like a flat commitment on this, because if what you say is correct then I presume the motion which I will be presenting later--"The Attorney General of Ontario be instructed to refrain from launching any appeal against the decision of the Supreme Court of Ontario in the case of David Baird et al and Her Majesty the Queen in right of Ontario"--will be passed by this committee.

Hon. Mr. Walker: That is a rather interesting thing. That is one of the most hypothetical things I have ever seen in government. I do not know how you can prejudge what the case results will be. What you are doing is underselling the case of the plaintiffs. I think that is a bad position to be in at the moment.

Mr. Swart: Mr. Minister, you cannot have it both ways. Either there is a commitment given here that you will not appeal, or a resolution passed, or we have to expect that there may be an appeal. If there is appeal, you know the delay that will entail.

Hon. Mr. Walker: Oh, come on, Mel. It is not an either-or situation in life. Everything does not present itself in that kind of way.

Mr. Swart: Of course it is either-or.

Hon. Mr. Walker: No.

Mr. Swart: Either there is a commitment, we do not appeal, or the chance that the opportunity to appeal remains open.

Hon. Mr. Walker: I think it--

Mr. Breithaupt: If you lose, you might want to appeal.

Hon. Mr. Walker: I think it highly unlikely that there be an appeal. Indeed, there may well be an appeal on the part of the people who have brought action for all we know. I do not see one, at the moment, but I do not think it is fair to the public of Ontario to completely destroy any prospects of future avenues. I just do not think there is going to be an appeal. I would think that was highly unlikely.

Mr. Swart: I would like the Attorney General here, too, Mr. Chairman, to answer that question which is very relevant to our decision here. I would just put forward the argument again that this committee and all members of this committee have stated very strongly that they want to see justice done to the investors, that they want to see a quick solution of this problem. Therefore, we as a committee have to determine whether the likelihood, if this remains as a civil--everything based on the civil action, whether it is going to be a way down the road when any decision is made and whether, in fact, the Ontario government is going to use section 8 of the Consumer and Commercial Relations Act as a defence against paying.

Hon. Mr. Walker: But we do not know the--

Mr. Swart: Those are the things that this committee has to decide.

Hon. Mr. Walker: No. You know the answer to that. Let me read you my statement made to the House:

"Because of the federal government's responsibility for Astra Trust, a fair determination of the extent of the province's liability can only be made if there is determination of the federal government's liabilities, and we think they are extensive." Without Astra, there would be no Re-Mor, remember that.

"Unfortunately, it is not possible to add the federal government as a party to these test cases, and any judicial determination of the federal liability can only be made in a separate set of cases in a federal court. The federal crown law officers have made it clear to our crown law officers that they expect the province to rely on all its legal defences against the claims of the investors. This means that if the province does not rely on its legal rights in these cases, the federal crown will resist payment of any claims against it for contribution to the investors on the ground that the province did not properly defend itself."

I do not want to undersell the investors in this kind of case. You may want to, but I do not want to do that, Mel. I do not think you really want to when you think about the consequences of what you are suggesting.

Mr. Swart: I am not wanting to undersell the investors. I want the commitment of the Premier of this province to be lived up to, that if negligence is proved, they will be compensated, and that is a different matter you would agree from bad faith.

Hon. Mr. Walker: You will find that the Premier's--

Mr. Philip: You cannot promise one thing at an election and then turn your back on it afterwards and play games with section 8--

Hon. Mr. Walker: No. The Premier's commitment stands.

Mr. Philip: --and that is what you are doing.

Hon. Mr. Walker: No, sir. The either-or does not exist. The Premier's commitment stands.

Mr. Swart: Gentlemen, I just have one more point that I want to raise and then I can--

Hon. Mr. Walker: Let me make that clear. The Premier's commitment stands.

Mr. Swart: Mr. Chairman, all of us on this committee have some right to be confused when on the one hand we are told the Premier's commitment stands, which says they will be compensated if negligence is proved, and on the other hand, saying

every defence will be used and that you must use them, which includes proving bad faith, which is a separate matter from negligence.

Mr. Chairman, there is one other aspect of this that has to concern us as well. There is a test case going forward now. There has been a verbal agreement of course that what is decided in this test case will have an application--I think (inaudible) is the word--to compensation for the other investors. I have seen no commitment that it will apply to the other investors per se.

Hon. Mr. Walker: It will apply.

Mr. Swart: Pardon?

Hon. Mr. Walker: It will apply. The decision of the test case will apply to the others. In some cases it cannot be married absolutely, but it will provide the guide work or the framework by which any decisions made on the balance of the cases.

Mr. Swart: Yes. You are giving your commitment then to this committee--

Hon. Mr. Walker: Yes.

Mr. Swart: --that the test case--whatever happens there, whatever decision is made on that--will apply to the other investors. Now there may be--

11:20 a.m.

Hon. Mr. Walker: To the extent that--

Mr. Swart: --some of the investors in different circumstances--

Hon. Mr. Walker: That is right, to the extent that it can.

Mr. Swart: --but it will apply to the other investors.

Mr. Breithaupt: It will certainly bring a pattern for (inaudible), depending upon the results, as closely as it can be applied, so that at least, in that form, there is an acknowledgement for that responsibility, which I certainly welcome.

Hon. Mr. Walker: That is right. The biggest hurdle to overcome, back in May and June, was getting the agreement of the lawyers on what should be the proper test cases to go forward. Some 18 individual actions were chosen as the test case to go forward, because they were representative, it was felt, of the entire field. So, to the extent that we can apply it, it will be applied, but there may be some mutations. But basically it is the pattern, as Mr. Breithaupt has suggested.

Mr. Swart: Mr. Chairman, I was going to introduce another resolution on that. I will take the word of the minister and his commitment that it will apply to all. That is the first



set commitment given to the words that have always been used before that it would be a guide.

I am aware that on a test case as the others went to court, that the court would rule in a similar manner on those test cases. My concern is that those others should not have to take any action themselves to get the settlement, and I understand, from what you say, that will be the case. Is that right, Mr. Walker? They would not have to take an action to court?

Hon. Mr. Walker: In the followup cases?

Mr. Swart: Yes.

Hon. Mr. Walker: Highly unlikely, unless the mutations presented a problem. But I do not think that is the case.

Mr. Breithaupt: There is one thing that should be suggested and that is where the statute of limitations might arise, it may be that in order to protect themselves, at least the issuance of writs would have to occur. But to go to all of the other proceedings, would not have to occur, if you leave it about six years. However, I do not think that it is going to take quite that long. But other than that, Mr. Swart is quite correct in the theme that has been proposed.

Hon. Mr. Walker: To have Mr. McMurtry's answer, I will just read again his June 23 statement. This relates to the negligence question.

"The statement of claim of the plaintiffs alleges that the crown, its servants and agents were negligent in issuing a mortgage brokers licence to Re-Mor Investment Mortgage Corporation. The claim sets out the particulars of negligence. The court will be asked to determine whether the crown, its servants and agents were negligent. In other words, the negligence is the essence of the case. Therefore it should be obvious that all of the circumstances surrounding the registration of Re-Mor will be revealed and evidence produced at trial."

Mr. Swart: That does not really answer any questions. Just in summary, the problem before this committee today is whether we delay any further proceedings of the committee and delay such things as a motion for compensation to the investors until the civil proceedings are concluded in the court. Tied to all that--

Hon. Mr. Walker: It seems a logical delay.

Mr. Swart: Tied to all that, of course, is the question of whether it is going to be appealed. Tied to all that is the question of the delays which are being instituted, have been instituted, because there is no alleged case against the federal government which we have had no independent advice as to whether there is any such case as far as the Re-Mor investors go.

Hon. Mr. Walker: I think I can give you the undertaking that it is not going to be appealed.

Mr. Swart: You are going to give the undertaking here that it will not be appealed?

Hon. Mr. Walker: I think I can give that, yes.

Mr. Breithaupt: Of course that is an undertaking which, with respect, the Minister of Consumer and Commercial Relations puts himself at some risk in giving. It may be that certain aspects of the decision, dealing with the application of the law, could and should be resolved upon by the Court of Appeal. It may not be necessary to go to the Supreme Court of Canada, but it might well be that the investors are better served if certain aspects have to be clarified.

After all, you are depending upon the first level of our system to come up with all of the answers. The reason we have two other levels in the system is because sometimes the answers are not entirely satisfactory. So that while having been the person who raised the matter in the first place--how many years ago is it now?--I would want to have it resolved, to say entirely that there will be no appeal whatever the result may not be doing the investors a tremendous service.

I do not know whether that kind of an undertaking--if I were sitting as Attorney General and heard one of my colleagues make that undertaking, I would be a little concerned about entering into a situation like that, which might not be the best thing. It is a very difficult balance to strike.

Hon. Mr. Walker: As I say, I think I can give the undertaking. I am prepared to report it back to my cabinet colleagues. I may turn up here and retract my statement tomorrow in estimates, but my guess is that I can give that kind of statement. Obviously, if it is going to be to the benefit of the investors and we decide to appeal, there might be those on the committee who would not hold us to it if it worked out to the benefit of the investors.

Mr. Breithaupt: That might well be.

Hon. Mr. Walker: I do feel that it is highly unlikely, and I think I can give the undertaking. I am going to report that to my colleagues and if I show up tomorrow in estimates and suggest otherwise, you will see that I highly recommended--

Mr. Philip: I can tell you what the Attorney General's words will be: "You did what?"

Hon. Mr. Walker: Mr. Chairman, I think--

Mr. Swart: In view of that fact, I will leave the third resolution. I will introduce it at a later point, with those qualifications, first of all, where in estimates we do not have the opportunity to move a resolution, so you are home free to come in and make that statement. (Inaudible) one that happened.

Mr. Breithaupt: Other than the one dealing with the salary, which might get mentioned.

Mr. Chairman: Thank you, Mr. Swart. A couple of things have developed over the last three weeks, when we were sitting on Bill 68. For those of you who were not here, the chair made a ruling, which was not overruled, that interjections and supplementaries are only with the permission of the person who has the floor in the midst of his speaking.

Therefore, you get no supplementaries on a particular question. You wait your turn to where the chair recognizes you, unless the person who has the floor and the following speaker, whose approval is necessary, wish you to have a supplementary.

Thirdly, we might as well get our procedure straightened around. Mr. Bradley has suggested that the official opposition should have the right--and I understand that such has been the practice over the last three years--the official opposition critic always is recognized first. I understand that is so and has been since I have had the chair. That is so in estimates, but I can find no where and understand there is no where in the standing orders that says that is so in other than estimates. We have been generally--and especially this morning we were dealing not even with a motion. It was sort of a hybrid discussion we were having based on nothing, and I followed the practice of recognizing the first person who wanted to speak, who put up his hand and caught my attention--Mr. Swart, in this case.

I throw it over to the committee as to whether they wish the official opposition always going first, or whether they wish me to recognize the first person to catch my attention or the clerk's attention who wishes to rise.

Mr. Breithaupt: Sort of after the fact now, if I may speak to that. It is a little late to concern yourselves with that at this point. However, I might suggest to you in future that is the custom and it is the usual way that--

11:30 a.m.

Mr. Chairman: On all questions, on all motions, whether estimates or bills or otherwise?

Mr. Breithaupt: It is my understanding that that is the way the system ordinarily works. I think it would be practical to follow that pattern in future.

Mr. Chairman: Is that the way the committee--

Mr. Andrewes: Mr. Chairman, I would concur with Mr. Breithaupt's suggestion. Certainly not being that familiar with the practice as opposed to the standing order, I will accept Mr. Breithaupt's recommendation. I think, Mr. Chairman, you have me scheduled to speak next and I will defer to Mr. Bradley.

Mr. Philip: What occurred earlier was that Mr. Swart had a series of motions that he was putting. If you will recall the decision yesterday the motion which was tabled first in the House was the one that was recognized and that is why the NDP motion concerning mortgage rates was the one that was debated.



I think that the normal practice of going to the official opposition and then the other opposition party and then the government party is one that has been followed in the committee. But when motions are moved then there is an exception to that, namely, that the person that moves the motion is the one who speaks first. That is what, in fact, happened here as indeed happened in the House yesterday.

So Mr. Swart does, I believe, have the-- You did the right thing in recognizing Mr. Swart, who moved the motion, and his motions, I believe, are on the floor at the present time.

Mr. Chairman: Right. It was not with regard to Mr. Swart's motion. It was with regard to straightening this up.

Mr. Swart: I would just like to say one thing. I do not want to belabour this. I was a bit surprised, quite frankly, when you recognized me. I did not know who you had down on the list.

Mr. Chairman: You were the only person at that point on the list. I take it therefore I am to canvass the official opposition first each time to ensure that they do not have any speakers they wish to be heard.

Mr. Breithaupt: That would be very nice.

Mr. Chairman: Thank you Mr. Breithaupt.

Mr. Philip: I believe that it is only the person that is the critic that gets recognized first, is it not?

Mr. Chairman: Yes.

Mr. MacQuarrie: On a point of order, it would seem that Mr. Swart in his introductory comments introduced a series of draft resolutions. There was no motion actually made to my knowledge.

Mr. Swart: I moved one motion, at the request of the chairman.

Mr. MacQuarrie: Okay, sorry.

Mr. Chairman: Shall we clarify this as to whether it is the critic or the official opposition. Mr. Philip has just interjected that it is the--I want to get this straightened because it is going to be a long winter, we might as well get the rules straightened around. Mr. Philip has stated that it is the official opposition critic who gets recognized first.

Mr. Philip: It is the minister first, followed by the official opposition critic, followed by the critic for the other party.

Mr. Chairman: You are speaking of estimates, of course.

Mr. Philip: Yes.

Mr. Chairman: Are you also speaking of all bills and all other matters?

Mr. Philip: In bills normally the minister speaks first, or his parliamentary assistant, followed by the opposition critic followed by the other opposition critic, followed by a government back-bencher or person.

Mr. Chairman: Fine. Then it is not that order when it is not the critic or his substitute who wishes to speak.

Mr. Philip: The exception to that would be in the case of dealing with a private member's bill or a private bill where whatever member it is acts in the same position as that of the minister, because he is the one that is moving the bill, or in this case, moving the motion.

Mr. Chairman: That is correct, Mr. Breithaupt, only the critic gets precedence.

Mr. Bradley: Well, Mr. Chairman, if you want to follow rules in the House for instance, the Chairman or the Speaker looks to the official opposition first. Let us say there was a bill in the House or a resolution or anything, unless, as we say, it is private members' hour, the Chairman or the Speaker ordinarily looks to the official opposition first, whether it is the critic in that area or whatever, he looks for a speaker from the official opposition, then looks to the third party for a speaker. That is ordinarily the procedure that is followed in the House, regardless of whether it is a critic or not.

Mr. Chairman: I do have a standing order on that and that is when two or more members rise to speak. In this case when two or more indicate at approximately the same time then it is the one who rose first. It is a priority according to standing order 19b.

Mr. Breithaupt: Yes, and the practice is I think, Mr. Chairman, that the opposition person rising first is seen first.

Mr. Chairman: If he is the official critic of the official opposition.

Mr. Breithaupt: It may be that the critic is unavoidably detained elsewhere on urgent public business--

Tape J-1135 follows

Mr. Chairman: I trust that he will be properly substituted for in that event.

Mr. Breithaupt: I hope that is the case, Mr. Chairman, I certainly do.

Mr. Chairman: Thank you, Mr. Breithaupt. Therefore Mr. Bradley has-- I am sorry, I have crossed you out, Mr. Williams.

Mr. Williams: Don't do that. Mr. Chairman, convention suggests what Mr. Breithaupt has said that in most matters before

the committee the critic for the official opposition leads off, followed by the critic for the third party. But there is that very important exception that is also part of the convention and that is the certainly any member of the committee has a right to introduce a motion before the committee. To do otherwise would of course impede the equal involvement of members of the government party to stand in line with a motion on any given matter, which would be inappropriate and unrealistic.

So the opportunity is there to ask to speak first on the matter on the basis of introducing a motion and then speaking to it.

It is regrettable in the last hour and a half that the motion was not first introduced so that would have legitimized Mr. Swart's one-hour monologue. But now that we have that matter clarified I think if stick strictly to that understanding so that any motion, Mr. Swart's motion, now if he is going to speak further, must be clearly before us. We only have one that is formally before us. The others are simply a statement of intent, which I do not think is adequate in itself.

Mr. Chairman: No, that is correct. You cannot have a motion on top of another motion. Mr. Swart's first motion is in front of us and is--

Mr. Williams: Are we continuing to debate that now then?

Mr. Chairman: Yes, and it is in order, and Mr. Bradley is next on the agenda, followed by Mr. Andrewes and Mr. MacQuarrie is thereafter.

Mr. Bradley: Very briefly on the motions brought forward by Mr. Swart, Mr. Chairman, I see--

Interjections.

Mr. Chairman: The one with two parts, the latter part of which refers to section 8 and the first part being negligence.

Mr. Bradley: Speaking to that particular motion, Mr. Chairman, I see the issues that we have before us today as being two different issues. One, and I think appropriately zeroed in on by Mr. Swart, is that of the potential compensation for the victims if negligence were to be determined either by committee, or in this case Mr. Swart is suggesting by the court.

I think what he is attempting to do is to expedite matters as much as possible, and I think that all members of this committee, we may disagree on just how we can accomplish that, but I would think that all members of this committee would be sincere in their belief that they would want to see that matter expedited and those people compensated if the courts saw fit.

Some of us would go a little farther, those of us in the opposition, to accept the position of the interim report of the justice committee back in February 1981, earlier this year, which in fact, indicated the committee felt it was negligence, and the



committee felt that on the evidence that had been presented to that point that compensation would be reasonable. Government members have not accepted that position but have accepted the position that the courts shall make this ruling.

It seems to me then that what Mr. Swart is seeking to do--once again, we may disagree with the dotting of the i's or the crossing of the t's--but what he is attempting to do, in expediting this matter and ensuring that the government is not going to fight the case to the hilt through appeals and so on, is that justice can be brought about for a number of people that many of us feel deserve compensation based on what we have heard in evidence in the past.

I am disturbed by the fact that the court cases are taking so long. We were given assurance that that would not be the case. We were given assurance, and I think many people were under the impression, that by this time we would have had some clear indication of what was going to happen. We now find out that it is into next year before we are going to get some kind of a determination on this matter.

11:40 a.m.

I guess it is a slight exaggeration to say that some of these people are going to die off, but if we look at the ages of the investors and in some cases the health circumstances of the investors, that might well happen. If we can expedite matters in any way so that the promise of the Premier can be fulfilled, I think this committee should be taking that action.

Mr. Swart's particular motion that we are talking about goes some way to doing that. His subsequent motions that he has indicated he is going to bring before the committee I think are also helpful, perhaps not entirely in the precise wording that we see but they are helpful.

I would say that I could speak in support of the particular motion that he has before us--I think enthusiastic support for that.

Mr. MacQuarrie has received letters--we have got some copies--from the Astra/Re-Mor association and we have seen some of the concerns that have been expressed, I think, because you people are the government members of the committee, about this dragging out, about the costs increasing. Even though we recognize that the provincial government is assuming some of the costs. I become concerned when I hear lawyers saying it is going to take longer and longer. I am not a lawyer, but I presume that the longer it takes, the more the lawyer gets paid. So I become concerned about that kind of cost, as well as the delay.

A little later on in this committee I will have a different thrust for members of the committee to look at and that is what this committee itself should be doing. I believe the committee should be reconvened to deal with this matter--not in the court cases aspect of it that we were talking about with Mr. Swart; I think appropriately he is dealing with that in his motions. But I

would be hopeful later on that we would deal--and I will not speak to it because it is not before us--with a motion that I will be putting before us, that this committee be reconvened to deal with the administrative aspects of it. Mr. Walker has touched on some of those. But let me not get sidetracked on that, except to say that I think that this does have two thrusts and we should be following both.

So I would be prepared to support this particular motion by Mr. Swart and I would hope that members of the committee would look at it, as I have indicated before, in somewhat of a nonpartisan nature, if that is possible before any committee of the Legislature, with a view to bringing about justice for people who have waited a long time for justice. Since the time Mr. Breithaupt first raised this matter in the estimates in 1980, and subsequent to that, these people have been waiting for justice.

They call me from time to time, because many of them live in my riding, where we had an Astra Trust office, and I think we would be doing not only those people a favour but the people of Ontario a favour if we were to bring this matter to a head just as soon as possible. On that basis I would support Mr. Swart's motion.

Mr. Andrewes: With the greatest respect, I feel that Mr. Swart has made yet another attempt here to oversimplify the legal processes, to oversimplify the obligations of the government to the investors and to the taxpayers of the province to deal with this matter fairly and equitably.

Just a brief comment with respect to the delay, or apparent delay, much of which has to be attributed to the lawyers who are acting on behalf of the investors and the lack of agreement amongst those lawyers on how to proceed.

I just want to draw attention again to the letter and memo from the Attorney General that speaks of the status of the actions and prosecutions that are presently before us and before the courts, where the government is co-operating with counsel for the investors to bring a test case on for trial at the earliest possible date, where the crown has agreed on a case in which there are 19 plaintiffs and after discoveries are completed the Chief Justice will be asked for the earliest possible trial date. And the government has offered to pay the legal costs of counsel for these investors.

I want to draw attention again to the verbal report of the minister this morning, who brought us up to date on the status of his ministry and the procedures within his ministry. The Ministry of Consumer and Commercial Relations is taking several steps in the administrative and legislative fields to ensure that a similar situation does not happen again. The minister made adequate reference to many of the things they are doing.

It seems to be a concern, and it is a long-standing concern in this committee expressed by members of the opposition parties about further investigation, that the current investigations are not adequate to expedite the whole procedure. Although perhaps in making these comments I am being a little premature in light of

the fact that Mr. Bradley seemed hesitant to make us aware of what he was going to propose after we deal with Mr. Swart's motion, I do want to mention that we are informed that the Ombudsman's office is now investigating and will, pursuant to section 15 of the Ombudsman Act, investigate any decision or recommendation made or act done or permitted in the course of the administration of a governmental organization affecting any person or body of persons in his or its personal capacity.

In that regard, a governmental organization as defined in the Ombudsman Act means a ministry, commission, board or other administrative unit of the government of Ontario and includes any agency thereof. Pursuant to sections 19 and 20 of the Ombudsman Act, the Ombudsman has extensive authority to examine documents and to question any person involved, including any employee of the government.

I think that we government members of the committee feel that an investigation by the Ombudsman will be independent, will be nonpartisan and will be procedurally fair to all those involved. I feel that an investigation by the Ombudsman will satisfy the concerns expressed by members of the opposition parties earlier on in these proceedings, while at the same time it will be meeting our concerns over the political partisanship and respect for the legal rights of those involved.

Again, perhaps I am pre-empting Mr. Bradley's comments, but I feel for this committee to carry on any further investigation is unnecessary in view of the Ombudsman's involvement and, in fact, would be an expensive redundancy, as well as potentially interfering with the Ombudsman in the proper conduct of his office.

Mr. Swart spoke of the Premier's commitment. It would be my contention that the matter is being pursued actively within the Ministry of Consumer and Commercial Relations as expressed by the minister this morning, is being pursued actively by the Attorney General's office, is further being pursued by the Ombudsman's office in an effort to ensure that the commitment of the Premier will be met.

Mr. Chairman: Thank you. Mr. MacQuarrie.

Mr. Philip: I thought we were rotating, in which case I would be ahead of Mr. MacQuarrie.

Mr. Chairman: I believe that was for the critics. I believe Mr. Breithaupt made it clear that was for the critics and that it was not an order of parties in all cases. Am I not correct, Mr. Breithaupt?

Mr. Breithaupt: Once the three spokesmen on a matter, usually the person making a motion and a representative from the other two parties, speak, I think the practical thing is for the chairman to keep a list as best he can and attempt to at least alternate between the government and one of the opposition parties, because obviously there are more government members and you want to try to be equal in what you do.



Mr. Chairman: Certainly and in keeping such a carefully made list, I have two names on there, Messrs. MacQuarrie and Williams, who have been waiting patiently. Is it quite in order that someone come along latterly and bump them, so to speak?

Mr. Philip: The procedure in the past, as Mrs. Campbell used to be very quick to point out to the chairman, over the years, is to rotate and to divide the time equally among all parties.

Mr. Breithaupt: Will you put me on your list when you get around to that?

Mr. Williams: (Inaudible) on the police bill or any other matter before the committee, where you recognize people as they put up their hands, with the indication to speak, and you put their names down. It has not always been that it has rotated. Quite often it has gone that way and it normally flows and ebbs that way, but you insist that it has to alternate, when you have a sequence of people indicating they have an interest to speak.

That is the pattern that we have had in the past, and certainly Mr. Philip will recognize that, following that pattern, he had more than ample time to speak on the police bill. I am sure he will on this occasion as well. But let us follow the pattern that has been established, and follow convention.

Mr. Philip: The pattern in the past, Mr. Chairman, and the chairman was often chewed out by Mrs. Campbell whenever he did not follow the pattern, was a rotation by parties, and a very careful calculation of how much time was being spent by each party; and the Liberals constantly objected whenever there was alleged to be too much time given to the NDP.

Mr. Chairman: Certainly that was not the case on Bill 68--

Mr. Philip: I would not want you to be chewed out by the new member for St. George (Ms. Fish), or by any other Liberal.

Mr. Chairman: Shall the chair then carry on with a compromise of recognizing those in order of request, having regard to the equal distribution of time between the parties at the same time?

Thank you. Mr. MacQuarrie, then Mr. Philip, then Mr. Williams.

Mr. MacQuarrie: Thank you, Mr. Chairman.

Quite frankly, I am a bit puzzled by this motion. We have a recommendation that we seek a ruling with respect to negligence. We had Mr. Swart earlier quote extensively from a statement of defence filed on behalf of the crown. We had the minister read an extract of a statement by the Attorney General specifying some of the allegations in the statement of claim which related specifically to negligence.

It would appear that negligence on the part of the government, its servants or its agents, constitutes a very vital component of this whole action, and the thought of separating that component from whatever other components there might be in the action seems to be a very difficult sort of thing to do, since negligence seems to go to the nub of the whole matter, and since the cases are already being tried and proceeding to trial. It would seem at this point that to ask for a ruling would be, in effect, to do exactly what is being done, and that is to ask for an early trial of the civil actions now before the courts.

I do not know if section 8 of the Consumer and Commercial Relations Act has been specifically pleaded. What it does really is to extend a certain protection against personal liability to certain servants or agents of the crown if they carry out their duties in good faith.

If there is a finding of negligence in the action, test case, call it what you will, that is now proceeding, I cannot see how this motion would in any way expedite the matter, since negligence is such a vital component of the whole proceedings. Consequently, Mr. Chairman, I see little purpose being served by the motion, and would recommend that the committee vote against it.

Mr. Chairman: Thank you, Mr. MacQuarrie. Mr. Philip?

Mr. Philip: I would like to start by dealing with Mr. MacQuarrie's and Mr. Andrewes' arguments. Not having been members of this committee during our long and very difficult inquiry into this, I can understand how they may be misinformed, and therefore I would like to set the record straight and inform them, so that they will not make the mistake again.

In the first place, with regard to Mr. MacQuarrie, of course he should be aware, or the people who do research for him should at least have been aware, that negligence is not before the courts, only liability.

Mr. MacQuarrie: Negligence is specifically stated in the statement of claim.

Mr. Philip: That is not the case. It is liability that is before the courts.

Mr. MacQuarrie: Based on negligence, and I think that this--Mr. Chairman, I wonder if we could copies of--

Mr. Philip: It is based on section 8, which is a very limited negligence.

Interjections.

Hon. Mr. Walker: It is also based on negligence; that is what it is all about.

Mr. Philip: With the deepest of respect, the former Minister of Consumer and Commercial Relations clearly indicated that he would hold very strongly to section 8, and that it would

be part of the defence, and indeed it is part of the defence.

If I may continue, then, without being interrupted, and then, if you want to get back on the list you may do so: with respect to allegations contained in paragraph 11 of the fresh statement of claim as amended: the defendants state that at all material times, the defendant Weinstein and the servants and agents of the Queen in right of Ontario were acting in good faith in the execution or in the intended execution of their duties, and the defendants plead and rely upon provisions of section 8 of the Ministry of Consumer and Commercial Relations Act.

And section 8 clearly states that no action or other proceeding for damages shall be instituted against the director or any member of a tribunal or registrar, or anyone acting under the authority of such a director, member or registrar, for any act done in good faith in the execution or intended execution of this duty, or for an alleged neglect or default in the execution in good faith of his duty.

It is difficult to prove that anyone has not acted in good faith. He can be the most incompetent bumbling jackass, and be directly responsible then for these people losing all their money, but as long as he did it in good faith, then there is no action. And that is the out that the government is taking.

Mr. MacQuarrie: He is not personally liable.

Mr. Philip: In February, of course, the Premier clearly stated, and I quote from the Toronto Star article of February 5: "Premier William Davis fell short yesterday of satisfying the victims of the collapse of Re-Mor Management Corporation who confronted him." But it goes on to say--and I am just trying to find the section: "He told demonstrators at one point that the government would compensate them if government negligence in the licensing of Re-Mor is proved in court."

12 noon

So what he is indicating there is that if negligence is proved in court he would compensate them. In fact, what the government is doing is using section 8 which says that the negligence has to be done in a way that did not show good faith in order for it.

Now that is clearly a breaking of an election promise if there ever was one. It is the same kind of doubletalk that the government used on rent review.

Mr. Mitchell: You are pontificating again.

Mr. Philip: I am dealing in facts. Those are the words of the Premier. If the Premier was misquoted, then we can produce a tape from a radio station that shows that fact what the Star reported was actually true and is a verbatim report.

Hon. Mr. Walker: Has anyone suggested that to you?



Mr. Philip: Either the Premier said it or he did not say it. If he did say it, then why is the government doing a flip-flop now that the election is over? It is interesting what you do in election times in order to get the heat off you, but how quickly then you break the promise.

Mr. Mitchell: Remember that some of us have the benefit of sitting on the committee with you. I think it is very valid to say, since you have commented indirectly to me, that our position--at least my position--has been rather consistent.

Mr. Philip: It certainly has been inconsistent with that of the Premier. As for Mr. Andrewes' statement that the Ombudsman is investigating this, we have had experience by the government as to what it does with Ombudsman's reports. We have had the experience of 123 cases under the Workmen's Compensation Board. Maybe it was a little bit more than that, maybe 153, but it is some number that we were recently dealing with in the Ombudsman's committee. We know what the government did with that.

They said to the Ombudsman: "Well, you may have proven your point, but tough luck. We do not agree it and we are not going to do anything." The Ombudsman under the Ombudsman Act only has the power to recommend, and this government has clearly shown what it does with those recommendations in many cases when it is awkward to them. They have shown that not only with the Workmen's Compensation Board's victims, but also in certain land dealings which we are all familiar with.

Mr. Mitchell: Stick to the subject.

Mr. Philip: We are sticking to the subject. If you are talking about the Ombudsman being a defence, the record of the government is clearly that the Ombudsman cannot be a defence because this government does not act when the Ombudsman talks. And so it is nonsense to say that somehow that these people have a recourse to the Ombudsman. If the Ombudsman was not followed on other occasions, there is no reasonable grounds to believe he will be followed in this occasion.

Hon. Mr. Walker: The Ombudsman's recommendations have been followed by government. I think we could give chapter and verse on the number of times the Ombudsman's recommendations have been followed in my own ministry that I was in prior to this one.

Mr. Philip: Well, we can give chapter and verse also, as we have shown in the House, where it has not been followed.

Hon. Mr. Walker: I do not think there was one recommendation we rejected in the Ministry of Correctional Services when I was there and I believe when Mr. Drea was there. There is no question about that. The government's record is replete with example after example following every single recommendation the Ombudsman has made.

Mr. Swart: In compensation?

Mr. Philip: In the Workmen's Compensation Board's cases? How about the 150 we just mentioned?

Interjections.

Hon. Mr. Walker: That was in one particular case and you are talking about a board and commission. You are not talking about the general government. You are talking about apples and oranges.

Mr. Swart: Ninety per cent of all the cases, but not all of them. Check that out.

Mr. Philip: Mr. Chairman, the minister has talked about--he did not use the word ghoulish, but words to that effect--implying that somehow it was inappropriate to talk about the fact that some of these people might not live until a settlement is reached the way this thing is dragging out.

Hon. Mr. Walker: I didn't say that.

Mr. Philip: Yes, Mr. Swart said that, and you objected to that.

Hon. Mr. Walker: Some people may not live to the end of this year.

Mr. Philip: That is true and it could be either of us.

Hon. Mr. Walker: That is not the kind of thing we make political hay over.

Mr. Philip: I would simply like to read a couple of cases which I believe were sent to Mr. Mitchell and which he has not chosen to read to you, but I will. It is a copy of a letter that was sent out addressed to the secretary, Astra/Re-Mor Depositors Association. It is by a Frank Parr who says, and I just quote the last sentence: "We are ill now and may die soon. If enough of us die, the matter will be covered up and the Niagara Falls businessman will never come to trial."

Then we have a letter by Joseph Seville--I am not sure whether that is a smudge mark or an accent over the "e"--which says: "I am sorry that I shall not be able to attend the January 30 meeting. I am 83 years old and slightly handicapped. My wife is in the Sunnyside Home and has been there since April 25, 1975, and I am trying to keep the apartment I am in. Moving at my age is"--it says "what good," but I suppose that is a typing mistake.

Those are just two letters from investors that indicate that in their mind they may not live through this process. Under the Mortgage Brokers Act, the registrar clearly has the obligation to grant a certificate except where it appears there are a number of things wrong with it. These are where "(a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts; (b) adequate provision has not been made for the protection of deposits or other funds or for assurance of title or other

interest contracted for; (c) the prospectus fails to comply in any substantial respect with any of the requirements prescribed; (d) the requirements under section 13 have not been complied with"--and you will recall that section 13 requires the filing of certain documents and information by a mortgage broker or someone wishing to take part in mortgage broker activities--"and (e) the proposed methods of operating do not accord with standard real estate practices in Ontario."

Mr. Chairman, I have had one or two people say to me: "Why are you pursuing this matter? Why do you open up the possibility that a number of taxpayers, all of us, will end up paying for an investment made by certain people." They say, "We are sorry that they are old people and that they have been ripped off, but why do you want the rest of us to pay for this if, in fact, there is negligence on the part of the government?"

The answer is very simple. In the first place these are not high rollers; they are not speculators. These were people who were offered a very small percentage more than the going rate of other trust companies. It is a fraction of a per cent. Most of them, or many of them, are retired people and they had faith that the government of this province was protecting them.

What we are talking about is trust in the financial system. Our financial system depends to a very large extent on trust. If the general public loses that trust, then the system collapses and the way in which people invest money in the system also is undermined. I say to you that if the government is negligent and does not acknowledge that negligence and does not compensate those who thought they were protected, then what we are doing is undermining the financial system. And I think that that effects all of us.

It is not just that a whole bunch of us are going to pay a few people who have been ripped off. What we are doing essentially is saying that if the government is going to be in this business, if it is going to give assurances that people are protected, if there is a mistake made and those people are not compensated, then we undermine the investment system. That affects all of us in a very direct way. That is what this motion is really dealing with.

We are saying that you should not use section 8 as a way of getting out of your responsibility as a government in protecting the public and protecting the confidence of each and every one of us in an investment system. You people are private enterprisers, and all three parties are committed to a mixed economy. If we believe in that kind of system and we want it to work, then we have to make sure those kinds of mechanisms are in place that give confidence to that system so that people can use it properly. That is what this motion is all about. I am hoping that even the Conservative members will support the motion.

12:10 p.m.

Mr. Williams: Mr. Chairman, to deal with the matters that were first touched on, when Mr. Swart was bringing himself to this motion he made reference to the fact that members of this



committee, and of the Conservative caucus in particular, felt confident that some real progress would be made in this matter over the summer--

Mr. Swart: The Conservative caucus only.

Mr. Williams: --which was the basis on which the matter was deferred until today. I think the minister has clearly pointed out the substantial progress that has been made within the jurisdiction of his ministry.

The prepared statement filed with the committee, as required by the Attorney General, also clearly indicates that real progress has been made with regard to the litigation. But in so doing, he has acknowledged and conceded the fact that the litigation perhaps has not proceeded as expeditiously as he had hoped or as I had hoped.

Mr. Swart referred to my observations, as cited on page 12 of Hansard of Friday, May 22. I voiced those similar thoughts at that time, that I was confident that some significant progress would be made over the summer months. On the basis of the reports, verbal and written, that have been submitted by the two ministers today, it is clear that significant progress has been and is being made in this matter. I feel that what I stated in May has in large measure come to pass, although I regret it has not moved even more quickly. So the position taken by the Conservative members last fall has been in large measure vindicated. We hope things will proceed even more quickly.

It is interesting to note in the report from the Attorney General in the exhibit that was filed--the one letter on the civil proceedings, dated September 25, by the counsel, Mr. Wickett--at the top of page two, it points out that just one proceeding within the overall process slowed things down over virtually a two-month period, just on the one motion that had to be entertained by Master Sandler with regard to section 25(b) of the Mortgage Brokers Act.

That was dealt with on June 25. He reserved his judgement on that matter until August 26. So just one single element within the whole process was delayed for two months. It was a technical matter but a very important matter. This shows that there can be in the legal process delays that cannot be totally anticipated. It certainly is no fault of this committee or the government members that delays occurred in that particular way, but it was important that matter be resolved in a legal fashion without the involvement of the politicians.

I refer to page nine of the Attorney General's statement in his last formal remarks to the House before the recess. He pointed out that with regard to section 25(b) of the Mortgage Brokers Act the application was before the courts and would be heard that week--I guess it was the last week of June. He pointed out that the matter was returnable on Thursday of that week--

Mr. Philip: On a point of order: We have a motion before us. The member is not speaking to the motion.

Mr. Chairman: Mr. Philip, I must take exception with that. I was on the point three or four times of ruling you out of order for the same thing. Carry on, Mr. Williams, but do try to stay as close as Mr. Philip did to the motion on the floor.

Mr. Williams: Mr. Philip always likes to introduce a little bit of levity into the proceedings.

Mr. Philip: Carry on. I am sure that every time you talk it helps our cause tremendously, Mr. Williams.

Mr. Williams: It was stated to the House at the time there was an application before the courts returnable that week to determine the scope of section 25. The reason I refer to it, Mr. Chairman, is because it states the government position with regard to that particular matter.

The Attorney General stated: "We are taking the position on the motion that we want to be able to make full disclosure on discovery and full production of documents, that we are not raising any argument of crown privilege, that section 25(b) does not, in any event, bind the crown so that the crown, as defended, is at liberty to produce documents otherwise covered by section 25(b). Once this question has been clarified, we will proceed to discoveries, making the widest production of information and documents from the government files."

That is a very significant statement that the Attorney General made at that time. He also is vindicated in the fact that the court ruled in that fashion and stated that section 25(b) could not be used to anyone's advantage to prevent evidence or documentation from being brought forward in this action.

Just that one item, unfortunately, did delay the proceedings and the discoveries that were anticipated to take place in the summer months. Only now are we at that point. It is clear, Mr. Chairman, that progress has been made but not as quickly as we would like.

For a moment, before touching on the technical wording of the motion, I would like, if I could--because it is something that Mr. Philip spoke on at length, as did Mr. Swart, which, I gather, they felt was dealing specifically with the motion at hand--to discuss the question of the Premier's integrity in this matter and the fact of whether or not his promise is being fulfilled. I want to address what I consider to be the false allegations made by Mr. Philip a few moments ago, suggesting that the Premier had broken his promise and commitment in this matter.

Let us really look at some of the public statements that the Premier made at the time, one of which Mr. Philip referred to a few moments ago and spoke on at length. Let us just set the record straight and show exactly what commitment the Premier has made and clearly show that the promise of the Premier is in position and will be upheld.

First of all, I refer to an open-air program that the Premier appeared on on radio station CKOC in Hamilton on February

4, during the election campaign when he was questioned by the commentator. In response to what the government's position was on this matter, the Premier stated: "If, in fact, there was negligence or liability on the part of the public servant, quite obviously the government of this province--I think really it is such a complicated issue, you are talking about the government of Canada--we would assume that liability if, in fact, it is established. I give you that assurance, but I think we have to go through the process"--meaning the legal process.

Again on February 4, when he was in St. Catharines, when he was approached, I guess, by the investors and other people, he was again on an open-air show, the Premier again stated, "When the process is concluded, after the cases are heard--which they will be--if there is a liability on any branch of the government of Ontario, the government will meet that liability and compensate." It cannot be any clearer than that. The Premier has made very clear commitments--

Mr. Philip: Why do you not quote from the rest of the--

Mr. Williams: Once the matter has been duly processed through the courts and is free from political partisan involvement, where a clear and objective decision can be made by the courts--

Mr. Swart: Are you saying he did not make those statements (inaudible) negligence?

12:20 p.m.

Mr. Williams: I will make one more quote of the Premier, if I might, seeing that I am being provoked here, Mr. Chairman.

On February 6 in a Sudbury radio station interview he stated at that time: "Again, I made it very clear to them that if in fact there was some negligence or liability on the part of government or governments that we would immediately make compensation. Our problem, sir, is to determine that in fact there was this liability or negligence, because we are talking about taxpayers' money."

Mr. Swart: Can I just have a moment on a point of order? I just wanted to hear the reading of that accurately. Was it "negligence or liability"? Could you read that over again, please?

Mr. Williams: I would be glad to read it again. In fact, I was in the process of reading it when I was interrupted. I will read it again. This was on the Sudbury open line show February 6 regarding the Re-Mor situation.

"I made it very clear to them that if in fact there was some negligence or liability on the part of government--"

Mr. Swart: "Negligence or liability," that is all I wanted to know.

Mr. Philip: You have just proven our case.



Mr. Williams: "--that we would immediately make compensation. Our problem, sir, is to determine that in fact there was this liability or negligence because we are talking about taxpayers' money if, in fact, compensation is to be paid. I made it very clear to these people that, if there was some negligence on government part we would move in."

Mr. Chairman, I think it is quite clear that the Premier's commitment is unequivocal and is premised on the court making a resolution of this matter and not listening to the rhetoric of partisan opposition members stating their views of what should or should not happen in this matter. I think that clears any misconceptions created by a few members of the NDP in suggesting that some promise or commitment has been breached by the Premier. It is just factually not so.

Mr. Chairman, with regard to the wording of the motion before us, as my colleague Mr. MacQuarrie has stated earlier, it is quite clear that this motion is clearly redundant. The matter of negligence is again the very substance of the litigation that we have before us. I know that one of the other motions he has indicated he would put forward if he has the opportunity had to do with the idea of appointing outside counsel to give us an opinion on the likely success or otherwise of litigation in this matter. I will certainly be speaking to that later.

I would like, if I might, to remind the members of the committee that at an earlier point in time back in June the Attorney General stated what clearly is the case, and I am more inclined to rely on his legal observations than those of an armchair solicitor such as Mr. Philip holds himself out to be. At that time, on June 23, in Hansard, the Attorney General stated:

"The statement of claim of the plaintiffs alleges that the crown, its servants and agents were negligent in issuing a mortgage broker's licence to Re-Mor Investment Management Corporation. The claim sets out the particulars of the negligence. The Court will be asked to determine whether the crown, its servants and agents were negligent. In other words, negligence is the essence of the case. Therefore, it should be obvious that all of the circumstances surrounding the registration of Re-Mor will be revealed in evidence adduced at trial. Unfortunately"--and I would ask Mr. Philip to note this particularly--"the opposition has been attempting to obscure this fundamental fact."

I think it really warranted repetition today to set the matters in proper perspective again, Mr. Chairman. As Mr. MacQuarrie was stating, really this motion is doing nothing more than what is already in the process of being accomplished in the courts today and will in due course be clearly resolved.

With regard to the other point of the motion relative to section 8 of the Consumer and Commercial Relations Act, again while it has been suggested by the opposition in a convoluted fashion that this somehow is going to prejudice the parties to the action, again Mr. MacQuarrie pointed out clearly that section 8 provides a protection with regard to personal liability of these individuals and in no way is it being used to try to protect the

government, so called, from these claims. We are prepared, as the Premier has stated, to accept the decision of the courts in this matter. If negligence is found and the government is found liable, there will be no hesitation for the government to meet the decision of the courts.

When there was some suggestion being made earlier that every defence was being thrown out by the government, it was not so much on the basis or with the attitude of trying to prove itself free of any negligence, but rather because it has borne in mind the fact throughout that with judgement there is some responsibility of the federal government in this matter.

If I might just refer the members of the committee back to a statement that was made by our own minister here today, earlier in the spring session, he pointed out that because of the federal government's responsibility for Astra Trust, the fair determination of the extent of the province's liability can only be made if there is a determination of the federal government's liability. Unfortunately, it is not possible to add the federal government as a party to these test cases. Any judicial determination of the federal liability can only be made in a separate set of cases in a federal court. The federal crown law officers have made it clear to our crown law officers that they expect the province to rely on all its legal defences against the claims of the investors. This is the point the minister was coming to.

This means that the province does not rely on its legal rights in these cases. The federal crown will resist payment of any claim against it for contribution to the investors on the ground that the province did not properly defend itself. So if the province did not proceed, technically, to enter a sound defence in this matter, it could, in fact, wind up prejudicing the claimants in the action. I am sure that the opposition parties would be the first to say that is the last thing they want to see happen.

Clearly, Mr. Chairman, the motion before us, when you assess it and put it into what is a clear perspective, it would be not in the best interests of the investors nor the members of this committee to support the motion before us this morning.

Mr. Chairman: Thank you. There is a standing order, of course, against speaking twice on a question. That has been broken more often than it has been kept. Mr. Philip, if you wish to speak--one of you--but would you restrict it to two minutes. You are having your second run at it.

Mr. Philip: I will give way to Mr. Swart since he is the critic of this ministry.

Mr. Swart: Mr. Chairman, I just want to reply to two issues. One is to say you have to use all defences, Mr. Williams, or there might not be a (inaudible) to collect from the federal government. I have no knowledge or any reason to believe you can collect from the federal government. But if you are using all defences, then I am afraid that means appeal court and then the Supreme Court. You were talking two or three years on Mr.

Bradley's motion, which he is going to bring in later, then I think one should fall and each of (inaudible).

Secondly, the statement by Mr. MacQuarrie and repeated by Mr. Williams relative to section 8 of Department of Financial and Commercial Affairs of Consumer and Commercial Relations Act deals only with the individual. In that act, of course, that is the case. Quote: "No action or other proceedings for damages shall be instituted against the director or any member of the tribunal or any registrar or anyone acting under the authority of such director, member or registrar for any act done in good faith and the execution or the intended execution of his duties or for any alleged neglect or default on the execution in good faith of his duties."

But he forgot to mention, of course, that there is another act that pertains to this, the Proceedings Against the Crown Act. Let me read to you subsection 2 of section 5 of that act.

"No proceedings shall be brought against the crown under clause (a) of subsection 1 in respect of an act or omission of a servant or agent of the crown unless proceedings in tort in respect of such act or omission may be brought against that servant or agent or his personal representative."

So, in fact, when you exempt the agent from being found negligent, you invoke this section 8 of the Consumer and Commercial Relations Act, then you also can invoke section 5(2) of the Proceedings Against the Crown Act and the crown will not be found liable because of that action under section 8, and you are therefore exempting both of them from making payments because of the invoking of these two sections.

12:30 p.m.

Hon. Mr. Walker: It has not been pleaded. You either plead your defence or you do not. You tell me what section of the defence refers to that. You read the statement of defence where we pleaded that.

Mr. Swart: When you are exempting under the act you are exempting the government.

Hon. Mr. Walker: You are being unfair. You tell us where we have done that. Let me give the undertaking necessary that there will not be an appeal.

Mr. Swart: There will not be an appeal against the decision of the Supreme Court of Ontario?

Hon. Mr. Walker: Right.

Mr. Bradley: Just a statement very relevant to what has been said today in terms of the minister who is looking after things, or the assistant who was looking after things at the time. This is from the February 14, 1981, issue of the Financial Post, is by Deborah Dowling and it relates to this matter of liability, personal liability or not, and just what the Premier said



according to Mr. Norman Sterling, who was the assistant, at that time, to the Attorney General. I think this is helpful to members of the committee.

It says: "Davis' position is the courts should determine negligence and that if negligence is proven the government will pay immediately and assume all legal costs incurred. While this has been scorned as something he would have to do anyway, Norman Sterling, parliamentary assistant to the Attorney General, Roy McMurtry, told the Post there is a strong legal argument available to the government that, even if a civil servant is found negligent, as long as he was acting in good faith there is no responsibility to pay."

Then Mr. Sterling is quoting Premier Davis next: "'But Davis agrees with the position that I have held from the very beginning,' Sterling says. 'I do not give a damn whether they are legally liable or not. If we are negligent, then we should pay.'"

Mr. Philip: When was that?

Mr. Bradley: That was February 14, 1981.

Mr. Philip: Election again, eh?

Mr. Chairman: Mr. Breithaupt not being here, all the speakers have spoken and the question shall now be put. All those in favour of the motion please raise their hands. All those opposed?

Mr. Swart: May we have a recorded vote, Mr. Chairman?

The committee divided on Mr. Swart's motion, which was negatived on the following vote:

Ayes

Messrs. Bradley, Philip, Swart.

Nays

Messrs. Andrewes, MacQuarrie, Mitchell, Piché, Williams.

Ayes 3; nays 5.

Mr. Chairman: Mr. Swart, you had placed in front of the committee your second motion.

Mr. Swart: I will move what was the third motion, if I may. I had four motions. I am withdrawing two on the commitment which has been given by this minister.

Mr. Chairman: Mr. Swart moves that this committee engage an independent solicitor, satisfactory to all three parties represented on the committee, to advise as to the possibility of success in any action by the Ontario government against the federal government to obtain compensation for loss by the Re-Mor

investors or reimbursement to the Ontario government for compensation or costs paid by it.

Mr. Swart: I think that motion is important. The Ontario government has stated it is going to use all of its defences. That is necessary if they are going to bring action against the federal government. We have already seen a delay of two or three months, which was probably brought about by that. We have already seen the invoking of section 8 with regard to that. We may also see further delays.

If the reason for invoking all defences is that the federal government may be brought into an action at a later date, then I think this committee should have the right to know whether there is independent advice on whether there is any action which can or will likely have any success against the federal government.

Mr. Chairman: Mr. Swart, may I interject at this point? By the way you were inhaling your breath, I do not believe that you were quite finished. Having had the opportunity to look at this motion for an hour perhaps, I am prepared to rule this out of order. We, as a committee, have no authority, except what is given to us by the House, and this committee, nor any committee, unless specifically given the finances and authority to obtain technical staff, does not have any such expert assistance available to us.

Mr. Philip: I have an amendment, Mr. Chairman, that would take care of that problem.

Mr. Chairman: No. That motion, as such, is out of order and you cannot amend a motion that will not stand.

Mr. Philip: Then Mr. Swart has the right to reintroduce a motion that will be in order, that follows substantially the same thrust but that will be in order.

Mr. Chairman: Mr. Philip, no. I would say the next person with the right is Mr. Bradley, who has another motion in front of us.

Mr. Swart: Then it is all right. But then if you rule this one out of order, we still have the right after that to move another motion at that time.

Mr. Chairman: Yes. I cannot stop you bringing a motion unless it breaks some other part of the standing orders. So, the chair has ruled that out of order because we do not have the authority or capacity to engage an independent solicitor as we sit now.

Mr. Williams: Carried.

Mr. Philip: It cannot carry; it is the decision by the chair. Nobody has challenged the chair on that.

Mr. Williams: Just showing him my support.

Mr. Chairman: Mr. Bradley, you supplied the clerk with a motion 20 minutes ago.

Mr. Bradley: Mr. Chairman, I was not aware that Mr. Swart's motion was going to be ruled out of order. He certainly does have a right to reintroduce that motion on a modified basis. But if you want to recognize me, I will deal with the motion I put before the committee. I gave it to you and each of the parties has a copy of that motion, which is a motion to continue. It is pretty straightforward. Both parties have a copy and the chair has one.

Mr. Chairman: Mr. Bradley moves that pursuant to the petition tabled in the Legislature on Monday, April 27, 1981, requesting the referral to the standing committee on the administration of justice of the annual report of the Ministry of Consumer and Commercial Relations for the year ending March 31, 1980, that the same annual report be brought forward before this committee for consideration beginning Thursday, October 15, so this committee may resume its inquiry into the role of the Ministry of Consumer and Commercial Relations and the Astra/Re-Mor affair.

Mr. Bradley: You will recall that it is similar to a motion I made earlier and at that time members of the government side particularly indicated their reluctance to support the motion because they felt there were court proceedings or administrative proceedings taking place and, on that basis, they were not prepared to support the motion at that time, in the spring.

Some of the members indicated that if events were to change during the summer, or if other matters were to come forward to change their minds, they might well be able to be prepared to support a motion of that kind to some degree, if it was their view that things had changed sufficiently. That is why I felt it would be appropriate, almost on the invitation of members of the government side to deal with this matter at some time in the future, to bring forward this motion.

In doing so, I was pleased, first of all, to hear the report from the minister today that there were some significant administrative changes that were taking place as a result of the experience with the Re-Mor/Astra Trust affair--let us call it that--at large.

Hon. Mr. Walker: Astra/Re-Mor.

12:40 p.m.

Mr. Bradley: Astra/Re-Mor, as the minister prefers. I guess I have to ask the question, Mr. Chairman, why a tragic event of this kind had to occur before we saw this kind of action; why a government which prides itself on being administratively close to perfect, and certainly characterizes itself as a government of great management, was able to allow a situation of this kind to exist this long, until such time as an event, the collapse of the Re-Mor and Astra empire, was to precipitate the kind of action we see from the ministry. They stand condemned for that. I think that most fair-minded people would say that.



Having said that, it appears that only--at least I will not say "only" because I think there was some initiative taken as well, but certainly the degree of pressure received from the opposition and the media was what really prompted the kind of reforms we are seeing at the present. Nevertheless, we have to be pleased to see them, and I guess all of us, as committee members, can take some credit for that.

Unfortunately, as I think Mr. Swart has appropriately pointed out, it is too late for the Re-Mor investors to benefit from what has happened. Others will benefit from the changes, but the Re-Mor investors will not.

We saw, back when we dealt with this matter last fall and early in the year, when we had a minority government situation, that we were able to extract, first of all, that the committee would deal with this, over the reluctant--I would not even say reluctant approval--the disapproval of the Attorney General. We obtained documents that were difficult to obtain, and I think we handled them responsibly for the most part. We obtained witnesses before the committee and I think, once again, for the most part, those witnesses were dealt with in an appropriate fashion. There were some exceptions that perhaps we felt were unfortunate.

Unfortunately, under a majority government, we have seen a change. I now have to look across at six hands. So no matter how many we manage to generate over here, we always know there is going to be one more over there to deal with this matter.

Mr. Philip: Today, you have got an extra one over there.

Mr. Bradley: Well, that is editorial comment.

Interjections.

Mr. Bradley: What I would like to see dealt with is not your court cases; Mr. Swart has dealt appropriately with that aspect in his motions. But I would like to see dealt with what we talked about back in the fall of 1980, when I said the following, to look at the parameters of what we might deal with:

"Through this particular motion, we would like to examine the role of the Ministry of Consumer and Commercial Relations and, in particular, the register of mortgage brokers in relation to the issuance of a mortgage broker's licence to Re-Mor Investment Management Corporation. Through this motion, we would also like to examine the role of the Ministry of Consumer and Commercial Relations and, in particular, the registrar of loan and trust corporations, in relation to the denial of a provincial trust company charter to a trust company to be incorporated by Mr. Carlo Montemurro and a subsequent registration, a monitoring of the registrar of Astra Trust Company; also the role of the Ministry of Consumer and Commercial Relations and, in particular, the Ontario Securities Commission, in relation to the investigations pertaining to C and M Financial Consultants Limited, Re-Mor Investment Management Corporation, Astra Trust Company, and other related companies."

These were the parameters establishing the terms that we

felt would be suitable for the committee to investigate at that time. I still see those as the parameters of the investigation at this time, and not dealing with the court proceedings that have taken place.

The interim report of this committee, in February, just before the Premier walked down the hall to ask that the House be dissolved, came forward with a resolution which was passed just before the deadline, and a couple of items there are relevant to my motion today; because the committee said at that time in its motion that: "The committee regrets that it has been unable to complete its inquiry, believes a great deal of information remains to be placed on the public record, information which would clarify what went wrong in the Montemurro affair, and why.

"It believes, on the basis of the documents available to it, but not yet in the public record, that this information would not place the government in a favourable light." That is an editorial comment of the committee, nevertheless a comment in a resolution.

"The committee believes, on the basis of evidence received thus far, that serious maladministration of the relevant provincial laws has occurred with respect to protecting the public against the activities of Carlo Montemurro and his various associates and corporations. It notes a wide-ranging criminal investigation is under way in this regard.

"While the administration of the relevant federal laws is beyond the jurisdiction of the committee, there is received evidence indicating that political influence was exerted on federal officials to incorporate and license Astra Trust as a federal trust company. The committee invites the Parliament of Canada to examine the transcripts of its proceedings and to take such actions as it deems appropriate.

"The committee is also of the opinion, based particularly on the evidence of John Clement, former Minister of Consumer and Commercial Relations and former Attorney General of Ontario, that political influence was exerted on provincial officials to obtain provincial registration of Astra Trust.

"The committee has no hesitation in reporting its view on the basis of evidence thus far that the government of Ontario should compensate forthwith those members of the public who lost money and financial transactions arising from the licensing of Re-Mor Investment Corporation as a mortgage broker. This compensation should include appropriate legal costs which such persons have incurred up to the date compensation is paid.

"The committee recommends that its inquiry be continued and completed should the Legislature and the committee be now dissolved either by mandating the standing committee on administration of justice constituted by the next Legislature or by the constituting of a royal commission of inquiry." We left either option open. Up to this point, the government has denied both options.

You say: "Have we not really gone through this? Is the press

even interested any more? Is the public interested any more? Are the members of the Legislature interested?" I guess, in an issue of this kind, it is easy to let it die at this point in time. Indeed, people are not knocking down the walls of the Legislature, they are not walking out front with their signs any more. We are talking about a relatively few people.

Mr. Philip brought up a valid point about the fact that you can really sell it to the general population, saying, "Hey, they are going to take your money to pay people who took some kind of risk and lost." I think that is an oversimplified way of looking at it, but, nevertheless, one that can be rather effective in the argument.

Looking at the interim report, looking at the Bimonthly Reports-- The minister has returned and he is very familiar with this. This is an issue over which he was called the minister of cover-up at the time and certainly he probably would want to be called that in regard to his activities with the censor board but certainly not with his activities in this regard. Nevertheless, the Leader of the Opposition (Mr. Smith) did make that accusation.

There was quite a bit of turmoil in the House over it, because there were a lot of rather substantial charges made against the Ontario Securities Commission. Some of us who did sit on this committee will remember--and this is rather interesting--the conflict of evidence between the Ontario Securities Commission and ministry officials. If you listened to one side for a little while, you thought: "Well, we have got it; it is the ministry officials. That is where the problem arises." Then on comes the other side and you say, "Oh, it is the Ontario Securities Commission." So there was a lot of conflicting evidence which I think should be investigated to determine just where the problem did arise. We could narrow it down to one of those two bodies as assuming part of that blame.

We have had some reluctance from the Ontario Securities Commission in even coming before the committee. It was only after the Premier said that he was not prepared to intervene in this matter--I think it was in late December--that we did get an undertaking that they appear.

There have been those questions in Bimonthly Reports. Let us look at some of their outstanding charges, which I do not think the minister has fully answered because he has not had the answers provided fully from the Ontario Securities Commission. And that is where he says, "The OSC failed to lay criminal charges until it was too late, it gave authorization for illegal payments, approved holding off the key receivership application, approved or condoned holding off proceeding with the Securities Act charges, held off freezing the funds of the key investment company." The charges went on. Through the avenue of the question period, I do not think those charges have been answered in an appropriate fashion. This is one of the reasons I want to see this committee reconvened for this purpose.

While it is an issue, I look at, for instance, this document. Now you people were in the House yesterday. It is such



an important issue that it is my view that it cost John Holtby his job because of the advice he provided to the Speaker over this issue. A public servant lost his job; I think that was a major part of it. There will be some who disagree with me, but the issuance of this and subsequent advice that was given was, I thought, good for the Legislature as a whole. It probably cost John Holtby his job over this issue. So it has had its ramifications far beyond this particular committee.

I said you may disagree with it, Mr. Williams, no doubt you would, but I think it was a major issue. I will not get into an argument today over that.

12:50 p.m.

I do not think the minister can hide behind the federal government on this. Our committee as a whole said the federal government had a role. I am the first one to say that and they stand condemned for whatever role they had to play in the licensing of Astra. But let us remember that the provincial government had some say in Astra as well. It could have attached conditions. Mr. Renwick went at it at great length on that particular issue. So there is not much room left under the rug for you to sweep this matter.

Mr. Philip said it is a matter of trust in financial institutions. I think that is true. The issue is trust in our financial institutions. The issue is, as I have said to you government members before, who speaks for the little person in this province if it is not for each one of us who sits on this committee? We are the ones who speak for them. If we do not allow this investigation to go on, this matter is going to be swept under the rug and those people will not see justice done.

Lastly, Mr. Chairman, and I heard a disparaging remark after I said it, but on December 4, that famous night, I ended my speech by saying: "In my view as an opposition member, I recognize the government side may not accept my perception of this. The Attorney General constantly has placed road blocks wherever he feels legitimate reasons, no doubt. We do not feel they are legitimate reasons. In front of the committee we have tried to obtain what we feel are the required documents."

I ended up by talking about the documents but by saying: "What you have done in this issue, and I think you can overcome this by voting for my motion, is you have had the people of Ontario legitimately ask the question, 'What have you got to hide?' You can overcome that question by supporting my motion."

Hon. Mr. Walker: You have got the documents.

Mr. Swart: Mr. Chairman, I am going to be brief in reply. I want to re-echo what the member for St. Catharines said. I am going to support, and my colleagues in this party will be supporting, the motion before us.

I stated at the beginning of my comments that I was primarily interested today in taking some action to assure quick

compensation for the victims and I introduced a motion which I intended would bring that about. It is obvious now, at least from the one motion that has been defeated, that the likelihood of compensation being awarded to the victims is far less than it would have been if section 8 had not been brought into play.

Before the members on the other side or the minister jump up and down, let me assure you that the lawyers for the Astra investors feel the same as I do. I had a consultation with them. They are very, very concerned about that section 8 being put in as a defence.

So I think we have to then revert to this kind of a motion. If we are not going to get it through the courts because of blocks being put in the way of what would normally be considered negligence--blocks put in the way by the government--then we shall have to go through the committee to see if we can get some action there, even if it is only a recommendation, after further deliberation to the Legislature in the final report that the victims be compensated.

The government members may think, because they now have a majority, that it is quite appropriate to cover up, with an election three or four years away. I want to tell you you have done some permanent damage to yourselves down in the Niagara Peninsula, particularly on this issue. Granted, we have Mr. Andrewes here now, he was not here before. But if you look at the popular vote that the Conservative Party got in the Niagara Peninsula, including Hamilton, in this last election--this is where most of those investors live--you will find that your percentage of the popular vote is way, way down. That is contrary, of course, to the situation that prevailed throughout the rest of this province. This cannot just really be covered up that easily. There is a lot of sympathy, and rightly so, for those investors out there.

I say to you that in a democracy it is important that everyone shall know what took place in government. In fact, by blocking this committee investigation--and that is what was done last June--referred it to fall--what is going to be done again now and it is the reason that I did not bring in a motion on it because I know what you are going to do over there. I know with a majority you are not going to permit any further investigation. But it is important that the people in a democracy should know, in depth, the action of the government.

Of course, we do not have any legislation in this province requiring disclosure. If we did it might not apply to this, I would be the first one to admit that. We keep talking about having a freedom of information bill. But we do not get it. So it is easy for you to withhold all kinds of information that should be available to the members of this Legislature and even more, available to the people of this province.

I see this motion by Mr. Bradley as an attempt to open up this issue further so that we can get to the bottom of it. If there is nothing there you want to hide, you have got nothing to lose. But if it is going to show that there was extreme government

negligence or whatever else, that might be turned up, and if you fear that, I guess you have some reason to vote against this motion which Mr. Bradley has brought before us.

I just want to reiterate that you people, I have no doubt, after the defeat of the motion which I put, there is no doubt--the only way that those investors are going to be compensated is if they are able to prove legal liability on the part of the government, not negligence. They are going to have to prove legal liability, and that is going to be with section 8 of the Consumer and Commercial Relations Act, and section 5(2) of the Proceedings Against The Crown Act. There is going to be no question about it, it will be very, very difficult to prove.

I think it is important that we open this up again in view of what has taken place. I am not sure--Mr. Minister, you did mention that you had word from Ottawa--was it the Minister of Consumer and Corporate Affairs who stated that they accept no liability whatsoever? You will recall back in the report which you made to the Legislature, you stated that the receiver for Astra/Re-Mor--I am not sure; for Re-Mor, anyhow, and probably for Astra as well--you stated that they advised you that there was a good chance of the federal government being liable, security funds from the federal government.

Of course, my colleague, Mr. Bradley from St. Catharines--I think I am right in saying--moved that he be brought before this committee to pursue that as well as other matters further, and that was defeated by the government members, so we cannot even determine whether he felt--whether we did question him on what his views were based--that there was a federal government responsibility.

We have in the correspondence, which we have here, a letter addressed to Mrs. Elsie Simmonds from Mr. Humphries, the superintendent of insurance dated July 23, 1981, which I would like to read into the record.

Mr. Williams: Mr. Chairman, on a point of order. Being the hour of one o'clock, I move that we adjourn and continue the discussion on Thursday.

Mr. Swart: Mr. Chairman, I had not finished speaking to the issue.

Mr. Chairman: Before we do adjourn, can we get some indication. We have the estimates coming up, and it is not fair to keep people waiting; they are supposed to start on Thursday morning.

May I have the assistance of the committee as to some time frame within which they wish to work? Mr. Swart?

Mr. Swart: Mr. Chairman, for the information of the committee, I will only take another five minutes, or at the most 10, speaking to this motion. I have the other motion that I will want to introduce in a rephrased manner. It would be my expectation that I shall speak for not more than five to seven



minutes on that motion. I have no further motions to introduce, so I estimate that if we have an hour and a half tomorrow, considering that others are going to speak, that would be adequate.

Mr. Williams: Mr. Chairman, concerning this motion, Mr. Chairman, they have taken more than their time.

Mr. Chairman: Gentlemen, we have three private bills, or reviver bills, very short ones. Is it possible, then, in view of Mr. Swart's estimate of an hour and a half, to get that on and the private bills on Thursday? I am sorry, I am informed we need notice for the private members' bills.

Hon. Mr. Walker: Mr. Chairman, I wish to make an observation. I do not know how far this discussion might go, but it does make it very difficult for our ministry from the point of view of the number of people involved in the estimate process.

If it were at all possible for this matter to be voted on in the next few minutes, that would be extremely convenient. I thought Mr. Swart said he had no further motions.

Mr. Andrewes: He has another one, his revised one.

Interjections.

Mr. Chairman: On these private bills, can we set those for next Wednesday, and get them out of the way?

Mr. Bradley: Half an hour on Wednesday?

Mr. Chairman: That should finish all three.

Mr. Williams: To assist the minister, Mr. Chairman, I think we should come to an agreement. If we are going to spend next Thursday on this issue, we should let it be known, so that the staff is not tied up here for the whole period.

Mr. Bradley: I do not see any point in the staff being here, particularly if we get on to it, the minister probably would be making his opening statement anyway. They would not need the staff to ask questions of.

Hon. Mr. Walker: I am sorry, I am missing something. Does this mean a week Thursday?

Mr. Bradley: No.

Mr. Williams: Maybe on Friday afternoon, as I understand it, we can finish this off.

Mr. Philip: The minister advised me that his opening statement is going to be two hours.

Hon. Mr. Walker: No, I do not think it will be that long. I revised it.

Mr. Philip: You have rewritten it?

Hohn. Mr. Walker: No, I have just put faster words in and now it should be an hour.

Mr. Philip: But if the minister is going to be an hour with his opening statement, then surely none of his staff need to be here for that; they can read it--

Mr. Chairman: Yes, on Thursday; in keeping with that, can we ask the minister to be here after routine proceedings, after a little while, to start his opening statement, and then his staff need not be here until Friday morning. But we will start the estimates on Thursday with his opening statement. So it is Thursday as far as his opening statement is concerned, and then his staff can be here the next morning.

Mr. Williams: Continuing with this first?

Mr. Chairman: Yes, we will continue with this first.

Hon. Mr. Walker: Is this motion now being dealt with at 3:30 p.m. tomorrow?

Mr. Chairman: Yes, following the routine proceedings.

Mr. Bradley: At the moment what we have before this committee is the Annual Report of the Ministry of Consumer and Commercial Relations, 1980, and that may be dealt with tomorrow, in other words?

What we are saying is that the minister should not have to drag all his officials in.

Mr. Chairman: That is right. He will not tomorrow.

One more matter, gentlemen. May we have an agreement, a consensus on these private bills? May they be heard at 10 o'clock next Wednesday morning?

Clerk of the Committee: For half an hour.

Mr. Chairman: Half an hour?

Interjection: Agreed.

Mr. Chairman: Fine, thank you; and the ministerial staff need only come in starting at 10:30 a.m. on Wednesday. That gives you an extra half hour.

Hon. Mr. Walker: On what day?

Mr. Chairman: Wednesday morning, because we are going to do the private bills at 10 o'clock.

The committee adjourned at 1:05 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS, 1980:

ASTRA/RE-MOR

CO-OPERATIVE HEALTH SERVICES OF ONTARIO

THURSDAY, OCTOBER 15, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Orion PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Bradley, J. (St. Catharines L) for Mr. Wrye  
Swart, M. (Welland-Thorold NDP) for Mr. Laughren

Clerk: Forsyth, S.

From the Ministry of Consumer and Commercial Relations:  
Walker, Hon. G., Minister

STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE

Thursday, October 15, 1981

The committee met at 4 p.m. in room No. 151.

ASTRA/RE-MOR  
CO-OPERATIVE HEALTH SERVICES OF ONTARIO

Mr. Chairman: We have a quorum here.

When we adjourned yesterday, we were in the middle of debating Mr. Bradley's motion. Mr. Swart had the floor and we were in the middle of his statement. Could he pick it up at the comma at which he left it?

Mr. Swart: There are only two or three sentences left.

Mr. Chairman: No repetition, Mr. Swart. Is that correct?

Mr. Swart: No repetition; that is correct.

I was speaking in support of the motion of the member for St. Catharines (Mr. Bradley), which would authorize this committee to resume its inquiry into the role of the ministry with regard to the Astra/Re-Mor affair, and I had made a number of points, which I will not repeat at the present.

I want to conclude by saying that there is no question now that the Attorney General's department is going to use every weapon in its arsenal against a settlement in the courts for the Re-Mor investors. I think that is not an unfair statement, and I appreciate the statement made by the minister on that; but at this hearing before the Supreme Court there is no question that they are going to invoke section 8, and from the defence, use every means they can to win the case in the courts.

If there had been a statement made by the minister, or the resolution which had been passed that would have dispensed with the use of section 8, I might not have been supporting this resolution, because my prime concern at this time is that those investors be reimbursed or at least compensated, perhaps not totally reimbursed, but compensated for the loss which, from all the evidence we have seen, is largely the fault of the operations of the Ministry of Consumer and Commercial Relations.

Hon. Mr. Walker: No, no, no.

Mr. Swart: That is your opinion, but I have the floor and I am going to voice mine at this time. I think the evidence which has been brought out over the last 10 months would tend to support my opinion rather than yours, Mr. Minister.

Hon. Mr. Walker: Don't forget to mention the federal government.



Mr. Philip: Why are you defending Frank Drea? He has never defended you before. He has never said any nice things about you at all. You keep on following one another around in the same ministries.

Mr. Swart: I never indicated that there may not be fault in the federal government, certainly in the Astro matter, but that is not really the issue before us at this time.

Hon. Mr. Walker: If there is in Astro, there is in Re-Mor.

Mr. Mitchell: Let us not lose sight of that fact.

Mr. Swart: We, as members of this Legislature, in my view, have the obligation to assure that, if there was negligence on the part of the government which caused those investors to lose their money, they are compensated, and if that takes a twin route, one through the courts, which is now to some extent being blocked, or the other route, through this committee--

Hon. Mr. Walker: What is being blocked?

Mr. Swart: They are throwing in section 8, which of course is going to make it much more difficult to get a favourable-- you did not have to throw that in the defence.

Hon. Mr. Walker: Come on.

Mr. Swart: It is much less likely that they are going to get compensation from the court case than there would have been if that was not put in as a defence. You know that; I know that. So I am in favour of using the other route as well, this committee route, to do a further investigation, to not only perhaps have some better chance of compensation for them, but to finally determine, if we can, where the fault lays.

Hon. Mr. Walker: It is a wonder you do not ask us to withdraw our defence.

Mr. Swart: No. I just want determined what the Premier of this province says, that if negligence is proved they will pay.

Mr. MacQuarrie: Mr. Chairman, when Mr. Swart commenced his remarks he indicated he was going to echo somewhat Mr. Bradley's sentiments. Mr. Bradley in turn echoed a number of comments that were contained in the report filed by the committee in the early spring or commencement of this year.

We have heard all of this before. Mr. Bradley made reference to coverups and sweeping under the rug and this sort of thing. There is no question or any prospect of any coverup at all. This matter is going to be aired fully and completely in the courts. The statements of claim, amended, and fresh statements of claim and statements of defence have been exchanged.

Mr. Swart is hung up on the fact that section 8 of the Consumer and Commercial Relations Act was pleaded specifically in the statement of defence. This, I submit, has no bearing whatsoever on the question of negligence. The question of negligence has been specifically pleaded in the statement of claim. The ministry, in the statement of defence, has not taken any advantage of the protection afforded to it by virtue of claims against the crown.

Getting down to the meat and potatoes of this resolution, we have two things. The first is that the annual report for 1980 of the Minister of Consumer and Commercial Relations be brought before the committee. We have the minister here and his estimates, 20 some hours if my memory serves me correctly, and every opportunity for members of this committee to question the minister to their heart's content on Astra, Re-Mor and related topics.

The second thing--this has already been mentioned--is that the Ombudsman has now entered into this matter and is, as I understand it, currently carrying out a complete investigation of the matter. I think an inquiry at this point in time, taking into account the litigation that is pending, taking into account the current investigation being carried out by the Ombudsman, is redundant, to say the least. Consequently, I would ask the committee to defeat this motion.

4:10 p.m.

Mr. Chairman: Mr. Philip.

Mr. Philip: I made all my arguments on Mr. Swart's motion. Mr. Bradley, Mr. Swart and I have been through this before. I have a feeling of déjà vu. Some of the other committee members have not been. It was fairly clear to us that some fairly strong evidence was presented, evidence that will not necessarily come out in court.

It is the responsibility of this government to protect the investors in this province. The Conservatives can argue about Astra all they want. The fact is that just because another government happens to blunder is no reason for incompetence by senior civil servants in our government, people who are given great responsibility by the ministry.

It is not as though this is something that is the only case that is happening. We have seen the collapse of Co-operative Health Services of Ontario recently. It marks the third financial scandal to emerge within 12 months in financial institutions under the supervision of the Ontario Ministry of Consumer and Commercial Relations. There is something wrong in this ministry in that area.

A few years back, before any of us were elected to the House, there were problems with regard to securities legislation and the ministry, through pressure from all sides and from the opposition, managed to clean up that act to the point where we have an Ontario Securities Commission that I think certainly operates in a way that does not create the kind of investor anxieties that existed years ago.

We have a responsibility for looking at what this ministry is doing and what that particular part of the ministry is doing. Their track record has not been all that good in the last few months. That is what we are here to deal with, not to worry about whether the federal government botches things up. They do that all the time; it has come to be expected. In some places, the provincial government is much more competent than the equivalent ministry in the federal government, but that is not the argument that Mr. Bradley is putting.

The argument that Mr. Bradley is putting is that there are blocks put in with regard to section 8 being used as a defence, that this government's role is to find out whether or not there was negligence on behalf of the ministry. That is our task. If the government is going to put up road blocks in the court system, then we have to look at it here.

If you do not care about these investors, if you are afraid of the truth, if you are afraid of looking at the very damaging evidence we had before us, then vote against it. You are the ones then who will have to answer, not only to the investors who have lost their life savings in many cases, but to the public at large who is very anxious about the very poor track record of this government in terms of protecting investors.

I am in support of Mr. Bradley's motion. I would have preferred Mr. Swart's motion and then we would not have had to spend time on that, but I suspect that this is not the only inquiry that we will be conducting. It may well be that there are other areas we should also be looking at until this part of the ministry is cleaned up.

Mr. Williams: Mr. Chairman, this is really the second redundant motion we have had before us in as many days. I cannot understand the rationale and the purpose really of putting this motion before the committee, because I think that anything that Mr. Bradley is endeavouring to achieve through this motion carrying can already be accomplished as we move into the estimates of the Minister of Consumer and Commercial Relations. There is nothing that I am aware of in the annual report of the Ministry of Consumer and Commercial Relations that deals in any more specific ways--in fact, it does not specifically touch at all upon the Astra/Re-Mor affair--than do the estimates as put forward by the minister in those documents which we will be addressing ourselves to over the next 25 hours of discussion.

I do not see that anything can be accomplished by supporting this motion when, as I recall, the purpose of putting the motion in the first instance last spring, having it referred from the Legislature to the committee, was that at that time the minister's estimates were that far away, to be dealt with in the fall. It was understood there was no access for members of the committee to deal with the issue in dealing with the minister's estimates because they were four or five months away.

But now we are here, and if the debates on this motion and subsequent motions on this issue do not take us through the next 25 hours, we will be into the 25-hour estimates period. That will



give the members of the committee full opportunity to raise questions on the activities, procedures and control process in the ministry to which the minister spoke at some length yesterday, which I am sure he will have an opportunity to expand upon under questioning in his actual estimate period as they may relate to Astra/Re-Mor or otherwise.

Any suggestion that somehow they continue to use this red herring of a coverup, stonewalling and so forth is just not factually correct. We have 25 hours. If you want to spend 25 hours talking about the issue, I am sure the minister will accommodate you. In any event, nothing more will be accomplished by this motion than by simply getting on with the estimates of the ministry. For that reason, and as I said at the outset, the motion is redundant as was the one on Tuesday; we should proceed.

Mr. Elston: I would not mind saying a few words since I have not had an opportunity.

Mr. Chairman: I might note that Mr. Philip had nothing to say and took five minutes by the clock. You have little to say. Will that be less or more than five minutes?

Mr. Elston: Yes, it will, less or more.

Mr. Philip: What sort of speeches are we giving?

Mr. Williams: Mr. Elston usually has something worth while to say, Mr. Chairman.

Mr. Philip: The longer you are here, the longer the speeches become.

Mr. Chairman: Mr. Elston has not been here long, so his will be short.

Mr. Swart: Mr. Elston had a good start when he came here.

Mr. Elston: I have some brief comments, if I may, Mr. Chairman. I am, of course, one of the new members to the committee in terms of this Astra/Re-Mor investigation. As you are well aware, the motion was brought early in our first sittings here that we deal with this matter. The motion was made that perhaps the members of this committee, many of us being new, were not able to adapt ourselves to the hard work that was required in pouring over the volumes and reams of information which were available to us. So we put the matter off until there was ample time for us to look into those materials and see what had been found and discovered through lots of examinations that the committee took on.

Included in that were the arguments that this committee was not able to conduct a hearing which would be fair to the people involved in the whole situation. That argument was met when the committee was meeting prior to the last election in that a tripartite or subcommittee of this committee met and screened all the documents which were to be brought before the committee and made public to ensure that there would be no danger to any

individual in face of the pending court proceedings, whether those be criminal or civil. From all testimonials provided by people from all sources the committee did an extremely good job.

4:20 p.m.

I am not going to go on at length about the integrity of the committee.

Hon. Mr. Walker: There is a certain amount of debate on that.

Mr. Elston: You wish to deny it, I presume, Mr. Minister. Is that correct?

Hon. Mr. Walker: I am making a general comment.

Mr. Bradley: Just ignore the minister's interjections.

Mr. Elston: The minister seemed to indicate he did not agree that the justice committee did any fair study of the situation. Perhaps that is why he does not want us to go on with it.

I have a couple of quotes here, one from Hugh Winsor, which I am sure has been quoted before, one in which on December 3, 1980, he was chastising the justice committee for taking that sort of stance.

Hon. Mr. Walker: When?

Mr. Elston: December 3, 1980.

Mr. Bradley: That was when he was on your side.

Mr. Elston: I will read it so that you can listen to it.

Mr. Bradley: The minister is very interested, I know.

Mr. Elston: I can read a fair bit of information here, but let me just say, to paraphrase it, that he was very upset that the justice committee was doing any sort of study into this matter at all. But later, on January 19, 1981--that was two weeks after the hearings had commenced--he starts by saying, "One of the purposes of this column is to congratulate the members of the justice committee for the careful way they have proceeded to uncover the shortcomings without disturbing the legal minefields that so concerned Attorney General Roy McMurtry and the OSC."

Hon. Mr. Walker: The last event like that occurred on the road to Damascus.

Mr. Elston: Did Mr. McMurtry lay minefields on that road?

Hon. Mr. Walker: He might have; he has been over there.

Mr. Elston: At any rate, let's just say there are some variances of opinion. The minister thinks that the justice committee did not do a good job; Mr. Winsor thinks they did a good job; Mr. Bradley thinks they did a good job--

Mr. Bradley: An excellent job.

Mr. Elston: --so does Mr. Swart and others.

Hon. Mr. Walker: I think the procedural affairs committee is actually looking into the efficacy of that entire action. I do not know if you are aware of the actual investigation being done by the procedural affairs committee of this House, but they are looking at the very question of the manner in which witnesses were dealt with.

Mr. Swart: That is the reality of the majority government--the guillotine.

Mr. Elston: Are they bringing before them the members of the justice committee?

Hon. Mr. Walker: I don't know that.

Mr. Philip: Then I suggest they call the chairman before them, and they had better also call the Speaker of the House, because he was the one who ruled it in order. They had better also call Mr. McMurtry if they want to do that, because his main argument was the sub judice argument.

Interjection.

Mr. Philip: It is as relevant as Mr. McMurtry's sub judice arguments.

Mr. Chairman: Mr. Elston has the floor.

Mr. Elston: I thought I had. Thank you, Mr. Chairman. There for a moment we got into a bit of a tangent.

Mr. Philip: Sorry, Mr. Chairman, I was provoked. The minister has that effect.

Mr. Elston: Provoked or not, the situation is that we were given the opportunity to do a bit of follow-up work to make sure we were in the position where we could follow what had actually happened in the study until we got here. We did that and when we brought the motion back, we were told that we should wait because of sub judice and several other reasons.

I have said before in this committee and I must say it again that having once been charged with going into the investigation of the matter, this committee cannot reasonably carry out what they were told to do, what they were authorized to do, if they are prevented from going any further than part of the way in their deliberations.



First of all, it seems unfair to those people who were investors or who had interests in other sorts of investments which were similar to the Astra/Re-Mor situation, who had hopes raised when this committee started to do the work, hopes that the problem areas would be found out by a committee of the Legislature; that those areas would be in a position to be rectified for all in the province to see; that all the dangers that had come to light through their investment difficulties; that all those problem areas would be carefully mended and that there would not be the same danger to other people who later in their lives would go ahead and try to invest their life savings in some sort of program similar to Astra/Re-Mor. It seems to me that we cannot now shirk that responsibility.

It is silly to suggest that we should take 25 hours out of estimates to deal particularly with the ministry, when this minister may not have full information on everything that went on, because he, of course, is not going to have the ability to bring in to us those people who were not directly related to the procedures in his ministry. We do know of several people whom the justice committee in its earlier deliberations wanted to call in front of it to find out from those people what had gone on, and specifically to question people in relation to their involvement.

It seems to me that although the minister might very well be of some assistance to us, he has in the past in the House been very hesitant to provide us with detailed answers--although he has provided us with lengthy answers on occasion--which really reach some of our concerns. Most of those answers, with respect to the minister, really were not answers to the questions asked at all. They were, in effect, attempts to get around the issue and wait until the matter could be postponed further by justice committee actions which, in effect, would postpone any inquiry.

I note that the Ombudsman is to be looking into this matter as well, and although I appreciate the ability and the promise of the Ombudsman's office, he is in a position only to make recommendations to this House. What we are going to have to do is wait for him to make those recommendations. The time may very well be long gone when we are able to effectively deal with the mandate which this committee was originally given.

We should be in a position where this committee can carry on with the investigation, do it to the fullest extent that is possible, in the same manner that the investigation was conducted earlier by the former members of the justice committee who sat on this matter, and the people here are certainly able to get into the hard work which is involved to carry out this investigation. Certainly they could do the same creditable job that the former justice committee did.

Those basically are my few remarks. I just want to say, as a result of those pieces of information, this motion should be supported and that the time for the ministry's estimates ought well be saved for those particular questions which arise out of the report, rather than having to deal full-time on Astra/Re-Mor, which is really not the subject matter of that report.

Mr. Chairman: Fine. Thank you, Mr. Elston.

Mr. Mitchell: Mr. Chairman, I was quite pleased to hear Mr. Elston say that the previous committee had done a good job. In frankness, I felt they had done a very good job of it. I stated before, and it is earlier recorded in Hansard, that I felt they had accomplished their goal. I am perhaps paraphrasing a bit, but they had perhaps met the goal which they had set themselves.

I find some of Mr. Philip's comments unfortunate in that I think he is attempting to prejudge any further activity. This is a personal point of view and I have stated this. You quoted yesterday, I believe, Mr. Swart, some letters that had been sent to the people. I wrote them a letter. I responded to their letters to me and I am not going to say anything differently today than I did to them in that letter. But I feel that any further activity by this committee could, in fact, be extremely detrimental to the court case that is being actioned upon with the help of the Attorney General's office.

I frankly feel that to prolong the debate at this point in time is wrong and could be very detrimental to the cause you are trying to see resolved, as we are.

4:30 p.m.

Mr. Chairman: Thank you, Mr. Mitchell. He being the last speaker, shall we have the vote?

Mr. Bradley: Mr. Chairman, before you do, customarily and noting--

Mr. Chairman: You would like to wrap it up, is that it, Mr. Bradley?

Mr. Bradley: I would like my last two minutes.

Mr. Chairman: Fine. Thank you, Mr. Bradley.

Mr. Bradley: You will be watching the clock for that because there have been some comments made that are worthy of reply.

I note that the same arguments are being advanced at the present time by the government members as were advanced before. The government members said, back in the spring, "When we come back in the fall we will have another look at it." There was a lot of sincerity in their voices when they said that, even though some of us in the opposition were the doubting Thomases.

We have come back in the fall and we get exactly the same arguments as we had before. They have thrown in a new one now: the Ombudsman is somehow looking into this and somehow that gets the Legislature off the hook. In other words, we should turn everything over to the Ombudsman and we would not have to worry about matters that come before this committee.

Mr. Chairman, the fact is, if you want to look at it from just one aspect of it, we are not during the estimates of this minister going to get John Clement before this committee or, as Mr. Mitchell says, Senator Stanbury. We are not likely to get Frank Drea coming before this committee during those estimates. There are a lot of other matters during the estimates, once we get to them, that we will be looking at.

So, when we cannot have these people--and do not forget John Clement was a key player, as far as this committee was concerned, in terms of our questions, because he was the guy on the stand, if you want to use the term they use in the courts. He was the fellow sitting here when the Premier (Mr. Davis) walked down the hall to call the election.

We were cut off in the middle of Mr. Clement's testimony. I, for one, would be very interested in getting some comments--and that will take some considerable time--with both the OSC people and the ministry people almost sitting side-by-side, and getting their version of it. The minister will say that can happen in estimates to a certain extent. I think the amount of time that will be required would be far greater than that.

I am sure members of the committee do not want me to go through all the reasons again in summing up. You have heard those reasons and I will not be that repetitive. But I do say to you, as you say to us that you are not afraid of anything coming out, that everything is going to come out through the court cases, the Ombudsman and so on. If you are not afraid of anything coming out, then why will you not allow this committee to continue to deal with it as a forum which can deal with it in a way where the public can be aware of what is going on?

The media will not be there for the Ombudsman's discussions, so the public at large will not know until the ultimate report comes. The media will be there for the court cases, but they are going to be dealing, in many cases, with fine legal points. We are talking about the criminal cases. They are going to be dealing with pretty fine legal points in criminal activities which we are not going to be dealing with--fine legal points as far as the civil cases are concerned.

I would think that good, progressive members of the Conservative Party would want to see justice done, would be prepared to forsake their ascension to the ministry and would be prepared to vote for this very reasonable motion to have this matter before the committee once again.

Mr. Chairman: Thank you, Mr. Bradley. Shall we now have the question?

For the sake of any of those who are in doubt as to the motion, since it has not been read today, I will read it again. The motion is made by Mr. Bradley that pursuant to the petition tabled in the Legislature on Monday, April 27, 1981, requesting the referral to the standing committee on administration of justice of the annual report of the Ministry of Consumer and



Commercial Relations for the year ending March 31, 1980, that the same annual report be brought before this committee for consideration, beginning Thursday, October 15, 1981, so that this committee may resume its inquiry into the role of the Ministry of Consumer and Commercial Relations in the Astra/Re-Mor affair."

All those in favour of the motion, raise their hands, please.

All those opposed to the motion, raise their hands, please.

Motion negatived.

Mr. Chairman: The motion fails six to five.

Mr. Swart, I believe you had a motion that was next in order.

Mr. Swart: Yes.

I move that this committee recommends to the Legislature that an independent solicitor, satisfactory to all three parties represented on this committee, be engaged to advise as to the possibility of success and the advisability of proceeding in any action by the Ontario government against the federal government to obtain compensation for loss by the Re-Mor investors or reimbursement to the Ontario government for compensation or costs paid by it.

Mr. Chairman: Mr. Swart, I do not have a copy of that in front of me, but how does that differ greatly from your second motion of yesterday that I ruled out of order, the one in which this committee was to retain a solicitor?

Mr. Swart: This recommends to the Legislature, Mr. Chairman--

Mr. Chairman: Oh, I see.

Mr. Swart: --and I would suggest to you that is in order when it is a recommendation to the Legislature.

Mr. Chairman: Fine. I missed that part of it. Do we have copies from yesterday?

Mr. Swart: You have copies. I distributed yesterday's copies. Really there is no fundamental change, other than that.

Mr. Philip: All that it essentially does is take yesterday's motion and, instead of this committee making a decision, we refer it to the Legislature to make the decision we are requesting.

Mr. Swart: Mr. Chairman, may I proceed?

Mr. Williams: Just before you proceed, Mr. Swart, I have the motion here from yesterday. I presume the words, "this committee," at the beginning of that motion are now changed.

Clerk of the Committee: "This committee recommends to the Legislature that an independent solicitor, satisfactory to all three parties--"

Mr. Williams: The rest of it is the same, right?

Clerk of the Committee: No--"represented on this committee, be engaged to advise as to the possibility of success and the advisability--"

Mr. Chairman: The rest is the same from there on.

Clerk of the Committee: The rest is the same.

Mr. Mitchell: After "recommends to the Legislature, that an independent solicitor..." what is following that?

Clerk of the Committee: "...satisfactory to all three parties represented on this committee, be engaged to advise as to the possibility of success and the advisability in any action..."

Mr. Chairman: The clerk will perhaps provide us with a photocopy of that. Even though the words are interspersed, still we should have it in front of us.

Mr. Swart: I apologize, Mr. Chairman, for not--

Mr. Chairman: Would you carry on, please, Mr. Swart?

Mr. Swart: Yes. Mr. Chairman, it seems to me that there is a matter before this committee that should be determined and will be determined if we pass this resolution. That is the position of the provincial government vis-a-vis the federal government in the Re-Mor issue and the likelihood of involving the federal government.

All members of the Legislature will know that back on April 23 of this year the minister, who was still with us, tabled a statement in the Legislature relative to this matter. The first paragraph on page four, after having outlined the procedures that were going to take place with regard to the test case in court, states this, and I quote:

"At the same time as the provincial crown law officers have been attempting to expedite the legal processes, officials of my ministry have been attempting to find common ground with the federal Department of Insurance and the Canada Deposit Insurance Corporation that would allow a fair and just negotiated settlement of the claims of the Astra/Re-Mor investors. Our negotiations were, in part, based on recommendations made by the receiver-manager and trustee in bankruptcy of Re-Mor. As an independent person charged with winding up the affairs of Re-Mor, the receiver-manager has been advised by his legal counsel that there was a substantial basis upon which the federal Department of Insurance and the Canada Deposit Insurance Corporation might be found liable for the claims of the investors."

Then on the next page we read:

"The crown law officers in the Ministry of the Attorney General will renew their efforts in this regard and take all reasonable steps to facilitate an early trial of the cases." Then this important sentence. "The province will use its legal defences in the argument of those cases so that if it should subsequently be necessary to sue the federal government we will not then be met with the argument or criticism that we did not properly defend the interests of the provincial taxpayer."

4:40 p.m.

This was the first statement, as you will be aware, that the Ontario government was going to use its full legal defences against the investors and their lawyers in the court hearing. We will note from this statement that the argument used was that if the province wished to recover the moneys or take action against the federal government, then they must use their full legal defences or their chances of recovering that money or taking action against the federal government would be much less.

If the objective is to give a full defence to collect from the federal government, I have to agree that that perhaps makes some very real sense--if there is a case against the federal government. The report we had and which I have already read here indicated very clearly that there was advice given by the receiver, and I presumed they received other advice, that they had a case against the federal government. In fact, it states negotiations were taking place at that time and negotiations were going to continue.

We had no independent evidence that this, of course, was the case, that there is any case against the federal government. Of course, I am not a lawyer and I cannot say whether there was a case against the federal government or not, but that was the argument used for the full defence and for invoking section 8 of the Ministry of Consumer and Commercial Relations Act to provide the full defence.

Since that time the minister himself has reported that they are certainly not going to make any voluntary settlement and indicated, I believe, to this committee yesterday that they have stated they have no liability. I may be paraphrasing, but in general that is what you indicated to us. You say you did not agree with them but that was the information they had supplied to you.

We have also before us a letter addressed to Mrs. Elsie Simmonds, of 3020 Glencrest Road, Apartment 504, Burlington, Ontario, by the federal superintendent of insurance, Mr. Richard Humphrys. He is replying to Mrs. Simmonds, to a letter she had written asking that they proceed with the settlement which had been proposed of one third, one third, one third. I will not read that whole letter, but I do want to read parts of it into the record here now. I quote from that letter.

"In regard to the position of persons who lost money in the collapse of Astra and Re-Mor, Astra Trust was a member of the Canada Deposit Insurance Corporation and the corporation has already taken action to pay depositors in Astra up to \$20,000 limit on deposit insurance coverage.



"As you indicate, there was some suggestion earlier in the year that the federal government and the Canada Deposit Insurance Corporation should participate in compensating investors who lost their money in the collapse of Re-Mor. Such an arrangement does not seem possible; first, because Re-Mor was an Ontario corporation and as such was not supervised by the federal authorities and, second, because Re-Mor was not a member of the Canada Deposit Insurance Corporation. The Canada Deposit Insurance Corporation does not have statutory authority to accept liability for investments in a nonmember institution.

"A number of persons who have invested in Re-Mor have alleged that they thought they were making insured deposits in Astra, and for this reason have claimed that they should be compensated for their loss by the Canada Deposit Insurance Corporation. In this regard I have to report that on the basis of advice given by its solicitors after an extensive review of the matter, the corporation has confirmed that it cannot regard Re-Mor investors as insured depositors for purposes of deposit insurance."

Here we have a denial of not only any voluntary settlement, but of any legal liability by the superintendent of insurance of the federal government. In the statement tabled by the present Minister of Consumer and Commercial Relations, he talked about the negotiations which were going on for voluntary settlement and then he talked about the legal liability of the federal government, both terms indicating there was a very real chance of success. From the point of view of the federal government, they do not agree with that whatsoever.

In view of the fact that the defence, the all-out defence, of the Ontario government and the invoking of section 8, is based on that sole premise that they want to be able to collect from the federal government and, therefore, that has a real bearing on the type of defence which is being put up by the Ontario government, by the Attorney General's department and on the chances of success of the investors collecting from the court, I think there is an onus on this committee and on the government to be absolutely sure that there is some possibility of collecting from the federal government.

In view of the advice we have had before, not only from solicitors but from the Attorney General of this province, about legalities and about sub judice and all of those things, it seems to me that this committee should have independent advice as to whether there is any case at all against the federal government. If we find out that there is not, then there should be a recommendation from this committee that that all-out defence be dropped and that only negligence from there on need be proved.

This court case is not likely now to come before the courts until some time early in the new year. It could even be later than that, but they are hoping to get a special sitting of the Supreme Court of Ontario early in the new year, perhaps before the normal sitting time. There is no guarantee of that at this time, but we have an opportunity as a committee now to get the advice of an independent lawyer and from that determine whether this committee

feels--it has been saddled with the responsibility from last fall of dealing with this whole issue--that the defence which the government has put up is appropriate in accord with what has taken place over all these months with this committee.

For that reason I would urge all members of this committee to seek this independent advice.

Mr. Philip: Mr. Chairman--

Mr. Chairman: Surely, Mr. Philip, you do not want the rules that an NDP member puts the motion and then you get the first--

Mr. Philip: Mr. Williams indicated himself--

Mr. Chairman: Yes, but your arbitrary rules of yesterday wanted it in a certain order.

Mr. Philip: The order is very simple. Mr. Swart moved the motion and spoke to it. Then it goes to the Conservatives and then to the Liberals.

Mr. Chairman: Not at all, it goes to the official opposition critic, who has not--

Mr. Andrewes: The Thursday rules.

Mr. Chairman: The Thursday rules, yes. Then we will go to Mr. Williams next.

Mr. Philip: The rules are very simple, Mr. Chairman.

Mr. Chairman: The rules of yesterday were established and very simple. I just wanted to make sure you were not going to take offence if I passed over you to Mr. Williams.

Mr. Philip: No. If you listened carefully, as I am sure as a good chairman you would want to listen carefully, then you would know that I argued in favour of rotation. Therefore, it would be completely improper for me to speak until a member of the Liberal Party and a member of the Conservative Party had had an opportunity to reply after Mr. Swart.

Mr. MacQuarrie: Mr. Chairman--

Mr. Chairman: No, Mr. MacQuarrie, Mr. Williams has the floor next.

Mr. Williams: Mr. Chairman, I think this is an interesting motion we have before us today. It tends to add a new dimension to the proceedings. But when one really analyses the motion and considers all of its ramifications, I think one would clearly understand and appreciate that the motion at the very least is premature.

4:50 p.m.

The Ministry of the Attorney General, in preparing its defence in this action, obviously has had in mind, not only the circumstances of the action itself, but also of its position in having to deal subsequently with the federal authorities. They clearly structured their defence in a way that would put them in the best position possible for that subsequent event.

As I read into the record yesterday, in a statement made by the Attorney General in the House in the spring on this very point at issue, he clearly pointed out that it was absolutely necessary to raise every defence possible, legally and technically, in order to ensure that the province would be in the best possible position for the purposes of going against the federal authorities in another forum, another court.

The reason I referred to it at that time was to make clear the reasons for their raising the best defences possible--not for the reasons alluded to by Mr. Swart on Tuesday, but rather on very legitimate grounds--were to ensure that it would be not only in the interests of the Ontario government but in the interests of the investors and the claimants that the best possible defence was put in, so that the federal authorities, at such time as an action was taken against them, could not plead a technical defence because the provincial authorities had not properly put forward their defence in the action.

Until the case presently before the Ontario courts is resolved and there has been proper disposition thereof and the evidence has been adduced and the judgement, if any, awarded, until that time, of course, it is very difficult for not only the Ministry of the Attorney General but for any other legal mind, whether it is an independent solicitor or otherwise, to make a total, accurate determination as to what the successes would be in proceeding against the crown.

I think the outcome of this court case will have a considerable bearing on the possible successes; and for that reason alone I think that it is premature to suggest that anyone should be appointed in an attempt to make that type of determination.

Interjection.

Mr. Williams: Not only is the motion premature in that sense but I think also it is inappropriate because, while there may be a lot of very brilliant legal minds around the province that could obviously give their own legal opinion on this matter, I do not think you will find a stronger battery of legal opinion than that which is couched in the offices of the Minister of the Attorney General. As the leading officer--

Interjection.

Mr. Williams: --of the crown in this province, the resources there should be unexcelled. It seems to me that, if we are going to have that assessment made, there is no better place to start than in the offices of the Ministry of the Attorney



General, I think that is the appropriate place from which we should get that advice and direction and I do not think that opinion would be given at this early stage of the proceedings of the pending court litigation.

For those two reasons alone, Mr. Chairman, I think it is not only premature but inappropriate to give serious consideration to this motion. Certainly the substance of it, to obtain opinion as to the possibility at a later time, but perhaps coming from the office of the Attorney General himself, would be something worth while and appropriate to consider. But to go this independent route, I think, would accomplish nothing. I do not think it is the function or purpose of this committee, as a committee of the Legislature, to be making determinations that are solely or clearly the responsibility of the Ministry of the Attorney General. This is his prime function in law, as one of the senior members of the Ontario cabinet and as the leading officer of the crown.

For those reasons, I think the motion at this time is clearly unsupportable.

Mr. Cunningham: The whizzbangs in that department (inaudible) the first time out. What a wonderful job they did.

Mr. Chairman: Mr. Philip.

Mr. Philip: I think Mr. Bradley is ahead of me.

Mr. Chairman: It could not possibly be we got out of order.

Mr. Philip: Mr. Chairman, after you have had this job for a year you will get the hang of it, I am sure. You have done a fine job so far, but--

Mr. Chairman: Mr. Philip, I think I have the hang of it. You seem to have a little bit of an obstructionist streak in you from time to time.

Interjections.

Mr. Philip: Mr. Chairman, you get an extra \$4,000-odd for your job, and I just want to make sure that you earn it in the same way as I have. I had Margaret Campbell in front of me, and I am sure you have never faced a foe like that in your life before, so I am just trying to give you a little bit of the feeling.

Mr. Swart: On a point of order, I am not sure whether the rotation should have gone from here to the Liberals to the Conservatives, or whether it goes from here to the Conservatives to the Liberals. But I am quite sure of one thing, and even though right now it is a disadvantage to us here in this party, to have two people speaking from the one party before anybody speaks from another party is somehow out of order.

Mr. Chairman: However, it was understood that when a motion is put on the floor, the critic from the official

opposition gets the first opportunity to speak. They did not wish to do so at that point. Therefore, the order I established yesterday would have put the critic for the NDP next, that is, yourself. We passed through you to the PCs. I thought that was following the same order.

You have passed now, so it is the next noncritic member in order, and that puts Mr. Philip next. That is following the Thursday rules, Mr. Swart.

Mr. Philip: I think your interpretation of the Thursday rules is out of order. Anyway, the legal positions taken by this particular ministry have not been notoriously successful. Indeed, if we look at them, they have lost one in the Supreme Court and they have just chickened out on another one when they abolished Condominium Ontario because they knew they were going to lose on that one in the Supreme Court as well.

In the light of that, I think it would be useful to this committee not to take the word of the Attorney General and his legal advisers, who have been pretty unsuccessful recently in their court cases; not to take the legal advice of this ministry, who are the same people, I believe, as the Attorney General consults--or indeed this ministry consults with the Attorney General for their legal advice--but rather to obtain outside counsel on this. That is all that the motion asks for.

If the government is convinced that the legal opinions it has expressed through that great lawyer, Mr. John Williams, among others, are correct, then it will have no fear of seeking outside counsel and getting an opinion. If, on the other hand, they have that queasy feeling that once more they are going to be proven wrong, then they will want to cover it up with rationalizations of various kinds and not seek that independent assessment.

What is really on the line is whether or not the government members have confidence in the legal opinions of their own government. If they do not, then they will fiddle around with all kinds of excuses as to why they do not want this outside opinion.

In a sense really, what Mr. Swart's motion is doing is to give an opportunity of a vote of confidence in this ministry and in the Attorney General. He has been proven wrong so often lately in his legal opinions that this gives us an opportunity to see whether or not an outside opinion will prove him right. That is all that we are asking for.

I can see that Mr. MacQuarrie is already very impressed by that argument and that he is getting ready to try to come up with some more arguments against it, but it is my empathy for you people, my sense that you want--

Interjections.

5 p.m.

Mr. Mitchell: You got me right here.

Mr. Philip: I did not bring my violin, but I simply want you to have an opportunity to prove that you really do want to be independent, that you really want to act in this committee, not as the puppets of the Attorney General, who is probably afraid of his own opinions and does not want them tested, but rather as people who really do want to test whether or not these opinions are correct.

It is up to you. You can stomp on it the way that you have stomped on all the other sensible motions in this committee, the way you have stomped on the opinions of the public on the police bill just recently in this committee, or you can go ahead and seek an independent opinion. That is what is before you.

Mr. MacQuarrie: I had a question for Mr. Swart at the outset. If my memory serves me correctly, someone yesterday mentioned the fact that actions were pending by Re-Mor investors in the federal court. Is that correct?

Mr. Swart: I did not make that comment.

Mr. MacQuarrie: I thought you were so familiar with the legal background of all this that maybe you would know whether actions were pending in the federal court. Who made that statement?

Hon. Mr. Walker: There was some reference to the federal court as being the only way to bring action against the federal government.

Mr. MacQuarrie: Have any Re-Mor investors taken action against the federal government in the federal court? Are any actions pending?

Mr. Swart: To the best of my knowledge, no.

Hon. Mr. Walker: I think the answer to that is yes, but I have to get a clarification on that. Mr. Crosbie is nodding his head that there are actions pending in the federal court.

Mr. Swart: By Re-Mor investors?

Mr. Cunningham: Maybe Mr. Crosbie could come forward and comment.

Hon. Mr. Walker: Mr. Crosbie has indicated to me that he has some knowledge of some actions in the federal court by some of the people involved with Re-Mor.

Mr. MacQuarrie: I was wondering how far those actions had progressed.

Hon. Mr. Walker: Mr. Crosbie is in the process of attempting to find that at the bottom of his copious file. If you want to continue, perhaps he can glance through it in the interim.

Mr. MacQuarrie: The minister will likely speak further to this point, but it seems to me that engaging a solicitor at



this point to determine the prospects of success would certainly relate very strongly to his ability to obtain information from the federal authorities regarding what exactly is in their files and in their possession.

Has this committee in the past been able to get material from the federal authorities? Have any federal witnesses appeared before it?

Hon. Mr. Walker: I just might make an interruption at this moment and pass on to you a view expressed in the letter dated September 25, addressed to me by the Minister of State for the Department of Finance, Canada, Mr. Bussi eres. I believe we tabled that yesterday in the committee. I will make sure that copies of available.

"A number of legal actions by Re-Mor claimants are pending, some against CDIC and others against Her Majesty the Queen in right of Canada. In so far as the CDIC actions are concerned, two have proceeded to discovery stage, but the remainder are inactive. With respect to the actions against the crown, a preliminary legal issue is now before the federal Court of Appeal and it is expected it will be heard before the end of the year."

Mr. Mr. MacQuarrie: There are those members on the committee who are far more familiar with individual Astra or Re-Mor investors than I am. I received two letters in total from investors. I just wonder whether they were aware of these actions pending in the federal court and of the opinions expressed by solicitors to clients in that connection as to the likelihood of success. You have to go to discovery. You have to get these federal documents even to be able to ascertain what chance of success you stand.

Mr. Cunningham: Mr. Chairman, from my understanding of some of these federal cases they relate to the definition of a deposit under the CDIC legislation. The actions that are brought forward are not necessarily representative of the group. They could be two or three individuals, such as Mrs. Simmonds, who made a cheque payable to Astra Trust and found that deposit--not that investment--wound up in Re-Mor. That is the standard practice in many of these dealings. Such is the nature of the legal action for some of those people, they are not all tied together. In many of them, the purposes are crossed because they are different kinds of creditors.

Mr. MacQuarrie: There are some actions pending against the CDIC and there are some actions pending, as I understand from the letter, against Her Majesty in right of Canada. The only possibility of getting access to some of the federal government material would appear to be through some of those cases.

Mr. Chairman: Thank you, Mr. MacQuarrie. Mr. Bradley.

Mr. Bradley: In the interests of brevity, as we all say, I would say we are speaking, first of all, in favour of this particular motion. There is no question in my mind that the

Ministry of the Attorney General cannot render an independent judgement as they have a vested interest. For that reason, the key word in this resolution is the word "independent." It says, "engage an independent solicitor." It also says, "satisfactory to all three parties," which is important--all the parties that are represented on this committee.

It is not as though the opposition is going to recommend somebody who is going to somehow, we think, render an opinion that is going to please us, or that the government members are going to insist on a person who is going to render an opinion that is going to please them because of the background of that person. The safeguard is there that it must be a person who is acceptable to each one of the parties on this committee.

I suppose this legal route we are going is going to take us some time and this may result in some reduction in that amount of time. It also might remove, what we consider to be an excuse, the feeling that the provincial government hides behind federal involvement to the extent that if we keep saying that the seed was the federal government and the provincial government was just involved somewhere along the line, somehow it can get off the hook.

The possibility is here that with the opinion which might be rendered by the solicitor that feeling could be overcome. I will support this particular motion. My colleagues from the Liberal Party will do as they see fit, but certainly I will be in support of this motion, which I think assists the investors and assists this committee, since it is obvious you are not interested in supporting my motion to have this committee continue its deliberations.

Mr. Mitchell: Mr. Chairman, Mr. MacQuarrie touched very briefly on the availability of documents that any solicitor who might be hired as an independent one would have to get. The question I have to raise is, how would he get them?

5:10 p.m.

The committee will recall that when we were operating under Speaker's warrants, which were issued to call witnesses, the committee were politely told--and I would be paraphrasing--they had no jurisdiction over the people served; in fact, they could not serve them in the House. They had to wait until the people came out in the street. You know the legal opinions that were given to us at that time. It would seem to me that the same rules then would apply to any federal documents. How then can any independent legal counsel that this committee might get approval to hire by the Legislature be any further ahead than what we ran into with the Speaker's warrants at that time?

I suggest to you that it would be putting any independent counsel in a very difficult position. Unless he sees those documents, which I am sure he would be forbidden to see, he could not then give us an opinion at all. He would have to come back to this committee and say, "I am sorry, but we have been forbidden to see them."

This committee was operating under Speaker's warrants, which we thought were a pretty good authority for demanding witnesses and other things, and it did not come about. I suggest to you the same result would come about from trying to hire any other counsel. He would really come back and tell us the very same thing.

Mr. Chairman: Thank you, Mr. Mitchell. Those being all the speakers, would you like to wrap up, Mr. Swart?

Mr. Swart: Very briefly, I would just reply that it would seem to me, with the tremendous amount of evidence which is here in custody of the province and available now to the solicitors who are involved in the court case, that would be sufficient material for a lawyer, together with the various provincial and federal acts, to come up with a fairly well considered decision.

My concern in this, and I will put it very bluntly, is that this is a subterfuge by the ministry to use all its defences to prevent the Re-Mor investors from getting a settlement. The Premier of this province said there would be a settlement if negligence was proved. It has become much more involved than that now. You are using all your defences to invoke section 8, and I have some suspicion that this is a subterfuge without substance.

Mr. Mitchell: Again, on a matter of privilege, Mr. Chairman, I think it should be clearly stated, and I did this before, that I dislike anyone trying to say this committee or any member of this committee is not concerned about the investors. We certainly are. We happen--at least I do, speaking for myself personally--to see the action to be taken somewhat differently than you do, but I certainly have every bit as much sympathy for those investors as you.

Mr. Swart: I did not say you did not have.

Mr. Bradley: It is just a matter of whose hide you want to save first.

Mr. Mitchell: Then you cannot pre-judge.

Mr. Bradley: Are you going to save McMurtry's hide and the government's hide or are you going to save the investors' hide? That is really the focus.

Interjections.

Mr. Chairman: Gentlemen, the floor was completed with that question of privilege.

We have the motion in front of us. I do not think it is necessary to read that again.

The vote is six to five.

Motion negatived.



Mr. Chairman: We have in front of us the motion of Mr. Bradley. The clerk is delivering it to your desks at this moment. I would say, in essence, it is the same as the motion yesterday, with the exception that Thursday is changed to Friday and the Astra/Re-Mor wording is changed to Co-operative Health Services. That is perhaps a fair way of putting it. You could call it the Co-operative Health Services motion to distinguish it from the one of yesterday.

Mr. Bradley: Mr. Chairman, thank you very much for recognizing me for putting forward this motion, which I think is a reasonable motion. I know members of this committee have been concerned about not dealing with the Re-Mor/Astra affair. They might well be interested under the Ministry of Consumer and Commercial Relations' annual report in dealing with another matter which is of great importance.

Mr. Chairman: Mr. Andrewes on a point of order.

Mr. Andrewes: Mr. Chairman, at the start of these meetings this fall, we properly set aside time to deal with Mr. Williams' motion of last May. We had a full discussion resulting from that motion. We agreed yesterday that the motion that was on the floor would be dealt with today. Mr. Swart suggested he had another motion to put, all related to Astra/Re-Mor, and now we have a new motion relating to another matter. I would suggest, Mr. Chairman, that motion is out of order and I would ask you to rule it out of order.

Mr. Philip: What is out of order about it?

Interjections.

Mr. Andrewes: The Order Paper reads that this committee is constituted to hear the estimates of the Ministry of Consumer and Commercial Relations. The chairman set aside time for discussion on Mr. Williams' motion. Mr. Williams' motion did not mention Co-operative Health Services.

Mr. Bradley: Speaking to the point of order, if you are even going to entertain it in any serious way, Mr. Chairman, we are still dealing with the annual report of the Ministry of Consumer and Commercial Relations for the year ending March 31, 1980. This is a matter which is part of that report. Therefore, I think the motion is very much in order and I do not know why the government members are afraid to deal with this matter. What is there in this particular matter that you are afraid of?

Interjections.

Mr. Chairman: Gentlemen, I was checking with the clerk; otherwise I would have perhaps stopped Mr. Bradley a little sooner. I am going to rule against Mr. Andrewes in that it is the committee that determines its own schedule. Even though the estimates are referred to us by the House, it is up to the committee to establish exactly when it wishes to so proceed with them. Therefore, the chair is ruling against your point of order, Mr. Andrewes.

Mr. Bradley: Thank you, Mr. Chairman.

Hon. Mr. Walker: Does this terminate the Re-Mor matter?

Mr. Chairman: Yes. The Re-Mor matter so far as Mr. Williams' motion and any other motions that came in front of us are concerned are completed. Mr. Williams' motion was decided yesterday. There had been Re-Mor up to this point, but now we are on Co-operative Health Services. When a person has the floor, or there is an amendment, or when the opportunity comes, if they wish to make motions, that is quite in order. But at this point I believe the motion of Mr. Bradley is properly in front of this committee.

Mr. Bradley's motion reads as follows: That pursuant to the petition tabled in the Legislature on Monday, April 27, 1981, requesting the referral to the standing committee on administration of justice of the annual report of the Ministry of Consumer and Commercial Relations for the year ending March 31, 1980, that the same annual report be brought before this committee for consideration, beginning Friday, October 16, 1981, so that this committee may undertake an inquiry into the role of the Ministry of Consumer and Commercial Relations in the collapse of Co-operative Health Services.

5:20 p.m.

Mr. Bradley: Speaking to the motion then, Mr. Chairman, Co-operative Health Services of Ontario, including its subsidiary Delta Dental Plan, was a company, you will recall, providing dental insurance and extended health insurance plans for approximately 140,000 subscribers in Ontario. The company also acted as an agent in providing Ontario health insurance plan coverage to various groups.

The company was licensed under the Prepaid Hospital and Medical Services Act, which is under the jurisdiction of the superintendent of insurance, financial institutions division, in the Ministry of Consumer and Commercial Relations. The company was ordered into liquidation by the Supreme Court of Ontario on February 9, 1981. This action was initiated by the superintendent of insurance who had suspended the licence of the firm on February 6.

At that time, the then Minister of Consumer and Commercial Relations, Mr. Drea, congratulated his staff for having moved quickly to uncover what he called a scam within this company. However, the circumstances surrounding the eventual collapse of this company and the warning signals that the superintendent of insurance and his staff were receiving raise a lot of questions about what sort of monitoring of this company was being practised by these regulators. These are matters in which the justice committee has the jurisdiction and, I would say, the responsibility to investigate. As I have said, it was the same thing with Astra and Re-Mor.

In April 1980, Co-operative Health Services of Ontario had its licence renewed by the ministry. However, the ministry at that time had some concerns about the operation of the firm. There had

been an investigation into the firm at that time although, according to the superintendent of insurance, Murray Thompson, there was not sufficient reason to refuse to renew the licence. In April their capital surplus was about \$1.3 million.

According to Mr. Thompson, this amount was similar to what it had been in the previous year, but Delta's business was expanding so that the amount of the premiums it was collecting and the claims it was paying were higher. This had eroded the four to one ratio the department's guidelines demand. For every \$4 in premiums, an insurance company should have \$1 in surplus. Delta Dental was slightly over the four to one ratio. Instead, along with the renewal, the department sent a warning to the company to tighten its budgetary controls and improve its premium-to-surplus ratio.

In addition, according to Mr. Thompson, it also started to monitor the company and receive monthly reports of their claims records. However, this monitoring by the ministry did not alert the ministry to the fact that in the month of June 1980 alone Delta had used \$800,000 of its surplus to pay claims. In fact, between April 1980 and October 1980, the company used all but \$11,000 of its \$1.3 million capital surplus to pay claims that should normally have been paid out of premiums collected. According to Mr. Thompson, the monitoring procedures used by the department would not have indicated that the company surplus was being eroded because the reports did not indicate whether claims were being paid out of the premiums or surplus.

The department learned about the payments out of surplus only in October 1980 after it received Delta's audited financial statements. Those statements showed that the company had spent all but \$11,000 of its \$1.3 million surplus to pay claims and staff. It was this reduction in surplus that resulted in the suspension of the company's licence by the department.

Given the concerns the ministry had, to the extent that they had even begun monitoring the company on a monthly basis, what surprises me is that they did such an inadequate job of it. Surely, if they were concerned, they could have required monthly audited statements. This is certainly an issue I would like to see pursued by an investigation of this committee. Also, I would like to see what other steps could have been taken during that period of time.

Another matter relates to events in December 1980. On December 16 the department held a hearing to determine whether the ministry should suspend Co-op's licence. Co-op asked for and received an adjournment of that hearing. The next day the company pledged all its good assets to the Canadian Imperial Bank of Commerce to secure a \$2 million line of credit.

Mr. Drea in February said, and I quote Mr. Drea, "I will tell you right now we are going to take on that bank." Mr. Drea also said, "That money should be given back; that is the customers' money. However, Mr. Gregory Morris, vice-president and regional manager for the Canadian Imperial Bank of Commerce, said in a statement that not all the facts were known to Mr. Drea and that the bank had acted properly and responsibly in this matter.



Clearly there is a difference of opinion here, and I have not heard anything since concerning the resolution of this difference. I would certainly like to see a justice committee investigation inquire into this controversy.

The more one delves into the affairs of this company and the circumstances surrounding its collapse, the more it raises even more questions. On February 10, 1981, shortly after the company was placed into liquidation, Mr. Drea was asked how much the company owed in unpaid claims. Mr. Drea responded, "It has been a relatively hectic time and the company's records are not in the best of shape."

I was a bit astonished to read this statement by the minister. I would have thought that after the investigation and subsequent renewal of Co-op's licence in April 1980, and the close monitoring of the company that followed, at the very least the books of the company would have been required to have been in decent shape. Surely, if the books were amiss, this is something the inspectors would have noticed and would indeed have been alarmed about.

Mr. Drea is also quoted on February 10 as saying, "We have been concerned about them, i.e. Co-op and Delta Dental, for a couple of years." He also said that while the company had its financial ups and downs, these were quite normal with a fledgling company. He added that Delta had been undercutting competitors in its tenders for group insurance plans in order to gain a share of the market.

These comments of the former minister raise a lot more questions than they answer. How long had Delta been undercutting its competitors and how did this affect its capacity to collect revenue? Was this offset by a significant increase in premiums? Is it not the case that the Delta insurance plan cost the insurance company a great deal of claims in the first few years as people took advantage of cheaper access to dentists? Indeed, is it not possible that a significant expansion to a new dental plan can seriously harm the financial stability of a company? Is this what happened? Was this noticed by the regulators? What did they do about it?

When Mr. Drea says they had been concerned about Delta and Co-op for a couple of years, could the ministry elaborate on what sorts of concerns these were? How were they dealt with? How did the companies respond to these ministry concerns if and when they were communicated?

Mr. Drea offers the qualification that the company's financial ups and downs were normal with a fledgling company. Delta Dental was incorporated and registered to provide nonprofit prepaid dental services to premium-paying subscribers since December 1971. Delta employed no personnel on its own, but was operated on a management fee basis by Co-operative Health Services. Indeed, Delta Dental and Co-op consisted of the same personalities and were even treated as one and the same entity by the minister. I think that a company that has been in business for 10 years can hardly be considered to be a fledgling operation.

It is interesting to look at the history of Delta's and Co-op's relationship with the ministry. Between 1972 and 1976 the ministry's main problem with Delta was getting it to stay within the four-to-one rule whereby annual premiums collected must not exceed four times the unimpaired equity in the company. This rule, which many consider too high, is a protection against a high run of claims which could break a junior insurer.

Beginning in 1975, other irregularities were continually being pointed out to Delta by the ministry. Finally, after a series of letters, the superintendent of insurance issued on June 10, 1976 a formal proposal to refuse to renew Delta's registration. A hearing was held and the superintendent's decision confirmed on September 8, 1976. The major reason for the decision was that Delta Dental had exceeded for over a year the four-to-one ratio by a very wide margin.

In addition, there were numerous other management practices involving possible breaches of the statute, including illegal investments, unacceptable expenses for directors' trips and meetings outside Canada and extra payments to certain employees for administration purposes over and above Co-operative's management fee.

The superintendent's decision was appealed by Delta to the Divisional Court and the appeal was denied on June 7, 1977. On June 6, 1977, however, Delta Dental Plan of Ontario was taken over by Co-operative Health Services of Ontario for the sum of \$1 and on the condition that Co-operative set up a \$5,000 yearly bursary for the purpose of assisting in the education of a dental student while attending university. Thereafter it was Co-operative Health Services which was registered with the ministry, although the only difference from the previous situation consisted of a personnel change in the office of general manager. Delta continued to operate as a division of Co-operative Health Services.

I would like to know whether ministry approval was needed for the sale, what factors were examined by the ministry in approving the takeover, did Delta's or Co-op's operations, financial stability, managerial strength change and, if so, how.

When one reviews the financial history of Co-op, one finds the same patterns. The annual reports of the superintendent of insurance show that for the nine years, 1971 to 1979 inclusive, Co-operative Health Services never had an operating profit. They show administration expenses far in excess of the cost of doing business, which is normal for that type of insurance writing. They show that a net profit was achieved each year by the receipt of so-called other income, namely, investment income, at ratios more appropriate to speculative investment than to a company which was incorporated as a nonprofit co-operative.

These reports also show, starting in the fiscal year 1977-78, a recourse to large bank loans to maintain liquidity. Such loans could only have been secured on the collateral of securities and mortgages owned by the company at a significant additional cost to operations.

It seems to me that that sort of activity should have alerted the regulators to suspect that something was amiss, or at least give them some reason to examine the operations of the company more closely. I would like to know how these annual reports are examined. Were there any concerns raised as a result of these annual reports and if not, why not, and if yes, what was done about it? This is a very important area which can only be examined by an investigation conducted by this justice committee.

5:30 p.m.

It should also be noted that many of the irregularities and questionable practices which were complained of in the case of Delta Dental, which was closed down in its original form in 1976, were irregularities and questionable practices which were also apparent in the case of Co-operative Health Services for quite a period of time before the company was closed down in 1981, before the company was being closely monitored by the ministry in the latter part of 1980 and before the reluctant renewal of its licence in April 1980.

Just to give you some examples, administration costs in this type of insurance writing should run between 15 and 20 per cent of premium income. Co-op's administration costs ranged between 20.7 and 41.4 per cent of premium income during the years 1971 to 1979. There is no discernible reduction in administration expense as business increased.

Just as a comparison, Blue Cross' plans administration costs in 1978 were 11 per cent of premium income against 20.7 per cent for Co-operative Health Services. Another example: After Co-operative took over Delta Dental in 1977, the company reported the following performance: In 1977, the operating profit was in fact a loss of \$340,000; its other income \$500,000; and its net profit then \$160,000. In 1978, it had an operating loss of \$418,000, but other income of \$510,000, for a profit of \$91,000. In 1979, it had an operating profit of \$646,000, other income of \$700,000 and a net profit of only \$53,613.

This other income consisted largely of income from investments, and there is a net figure after deducting the cost of pledging a significant portion of the company's bonds, securities and mortgages as collateral for bank loans. It would appear that Co-operative was receiving a return of 16 per cent or better on investment.

One would have to wonder what sort of investments these were, back in the late 1970s, to have earned such a high rate of return. Were they non-arm's-length dealings? Were they high risk investments? Were they appropriate types of investments for an insurance plan? Did the ministry become concerned over the rate of return for other income? If not, why not, and if yes, what did they do about it?

As members, we can see there are very many serious questions that have to be answered concerning the role of the Ministry of Consumer and Commercial Relations. I urge the members of this committee to vote in favour of the motion so that we may begin our inquiry of yet another financial collapse.



Mr. Philip: Mr. Chairman, I would like to speak in favour of the motion. It is rather ironic, or perhaps poetic, that under the financial institution division comes the responsibility for the Funeral Services Act and for the Cemeteries Act. What we have seen in a period of 12 months is the collapse of Co-operative Health Services which on February 9 marked the third major financial scandal to emerge within 12 months among financial institutions under the supervision of the Ontario Ministry of Consumer and Commercial Relations. I am sure that is not the kind of record that this minister, or more particularly his predecessor, would be proud of.

The first such scandal was the failure of John David Carney's Toronto-based Argosy, which went down last April with a loss of some \$26 million in mortgage and debenture investments. Then came the messy business we have just been discussing--Re-Mor Investments, C and M Financial Services, Astra Trust--through which more than \$10 million was lost, stolen, disappeared or somehow was lost in condominiums in Spain or other countries, or whatever had happened to it.

About 1,600 investors lost savings in the Argosy default. More than 600 were stung when Montemurro's companies managed to have their demise. One of the things that some people have asked me over the last few months, particularly when we were at the time when the Re-Mor matter was getting a great deal of public hearing in this committee, was, "Why are you so concerned about Re-Mor when a vastly greater number of persons have been put at risk with the collapse of Co-op?" The answer I have given them in recent weeks and so forth is that Re-Mor happened to come forward at that time and that we were pursuing Co-op as well but we had to do it in due course.

More than 120,000 people had group medical or dental coverage through these firms, through more than 1,200 work place contracts. As many as 20,000 more had secured such coverage under individual service insurance contracts. What we are facing is that subscribers who had medical or dental treatments are now finding that the hospitals have been sending them out bills, hospitals have been put to great inconvenience and to great expense, companies have had to go through considerable expense in finding alternative coverage for their people and they have had other expenses involved with this.

Why did it happen? How can a company writing medical and dental insurance, as Mr. Bradley has pointed out, for a period of 10 years, supposedly under the control of the Ontario department of insurance, have deteriorated to the point of going under this while supposedly being supervised?

Referring to the colourful bluster, the standard technique of one of the former ministers for distracting attention--and I am glad to see that this minister does not use the same kind of techniques, but is a quieter, more gentle soul when dealing with matters in perhaps a more responsible way in the press--Frank Drea in fact said--here is how he dealt with it in the public--that the company "fell victim to sharks"--those are his words--"and became a scam."

Everybody knows there are crooks in the business, there are crooks in the street and there are crooks anywhere you go. That is no excuse for the government that is supervising it to suddenly say, "Things are going to happen because there are bad people out there." I am sure that it is Frank Drea's Jansenistic background that has led him to that conclusion, because I have an Irish mother and I know that sense of Jansenism that affects one's outlook on life at times. You have to have more of an excuse--

Mr. Cunningham: Do not blame Jansen for Frank.

Mr. Philip: It is not Jansenism in Frank?

Mr. Cunningham: Do not blame Jansenism on Frank.

Mr. Philip: All right. It requires more than a philosophical outlook or even a paranoia that there are crooks out there, under every bed and behind every post, as an excuse to say the government has not done its job properly in supervising the company. Sure, there are people out there who will take advantage. The job of the government then is to see that this does not happen.

Consumer ministry officials did not know there were problems for a long time. The superintendent of insurance, Murray Thompson, has acknowledged that the firm was under investigation for some time before its licence to write insurance contracts was reviewed in 1980. The department was concerned at that time that the company's premium-to-surplus ratio had fallen below the four to one level, which the department calls for to ensure that claims will be met. But far from accumulating an adequate surplus, as Co-op was warned to do and should have done, the company's financial situation worsened, and all of this as the government was monitoring it and expressing concerns.

We have heard this in the testimony for Re-Mor. Everybody was concerned; they had red flags all over the place. Red flag probably meant stop, do not do anything.

5:40 p.m.

The government did ask in April to see monthly claims records and written reports, but this monitoring process did not show what was really going on because it did not indicate whether the claims were being met. In fact, they were being met by dipping further and further into the premium income of an already shaky position with the firm. It turns out that in June 1980 alone some \$800,000 of surplus was eaten up in this way and over the six months following the surplus further and further disappeared. When the firm's audited financial statements were obtained in October 1980 they revealed that a mere \$11,000 was left.

What we are seeing and why I think Mr. Bradley and I have gone through this is that it is more than just Co-op that we are talking about. What we are talking about is a pattern. It is the pattern of the Re-Mor scandal, which was before us. It has learned that something is wrong and ineffectual calls for better performance are issued, accompanied by inefficient monitoring

methods that cannot reveal the crucial information. After people are hurt in the collapse, the government responds with crocodile tears from people like Frank Drea making dramatic statements in the press. They talk about criminality involved, rather than a promise to shift and complete the action to protect the individual so it does not happen again.

If this were the first case, we would be alarmed, but what we are talking about is a pattern that has happened in three different cases. Teachers across Ontario whose superannuation was affected are not interested in Frank Drea's tears that he is sorry for them. The seniors who have been getting bills from the hospitals were not interested in the fact that Frank was sorry about the whole thing. Employees at de Havilland and North York municipal workers, who wanted assurances as to what was happening with their coverage, I am sure were not all that reassured by Frank's tears.

What we have is a series of events in one part of this ministry, events that have been repeated over and over again, and if for no other reason, for heaven's sake, we should take one of these to its conclusion to find out what is wrong in that part of the ministry so the new minister, the minister who was not responsible at that time, the minister who, I am sure, prizes his capability as an efficient manager, can then do something about it.

Mr. Chairman: Mr. Philip, might I interrupt you at this point? We must break.

Mr. Philip: I am supposed to speak on a motion in the House, so I must break also.

Mr. Chairman: Yes, in two minutes. We seem to be having a problem here. Yesterday it was probably mentioned that it was the intent of the committee to have Mr. Swart's motion and then today start the estimates of the Ministry of CCR running. We are finished today and we are not into estimates yet. We have the motion of Mr. Bradley. You are not through speaking and we have Williams, Cunningham and Swart who have indicated a desire to speak on this, and the chair has a motion that has been handed to us by Mr. Cunningham following this.

What is your pleasure tomorrow? It is not fair to keep the minister and his various staff here today and again tomorrow. I suspect, from my position here, that we are not going to get into estimates. We have a short time tomorrow after routine proceedings, an hour and a half at best, so we are not going to get into the estimates tomorrow. I am quite certain of it.

Mr. Swart: I suspect you are right and I think we should act accordingly.

Mr. Chairman: Here is another motion handed to me by Mr. Williams, which presumably is coming up in front of us. That is now two and a half motions in front of us. Can we come up with some consensus as to when we will get through with these various motions and start with the estimates of the ministry? What is your pleasure?



Mr. Cunningham: Shall we deal with the matters at hand as quickly and efficiently as we can tomorrow morning after question period and then proceed with the estimates?

Mr. Chairman: Estimates will start next Wednesday morning then?

Interjections.

Mr. Chairman: It would be 10:30 a.m., because--

Mr. Cunningham: I think we could have this matter wrapped up tomorrow.

Mr. Chairman: Fine. Is that the feeling of everyone, the consensus?

Mr. Swart: Mr. Chairman, I think that is a reasonable consensus. It could be that we might not finish. I do not even know what the other motions are before you. We can determine that really tomorrow. In fairness to the minister, we should say that he and his staff do not need to be here tomorrow as far as estimates are concerned and that we can notify him immediately after tomorrow, but the best guess now is that we are going into estimates next Wednesday.

Mr. Chairman: Is it then the consensus and understanding of the committee that we will have the private bills starting at 10 a.m. Wednesday, as we agreed yesterday, and that the estimates of the minister will commence at 10:30 Wednesday morning?

Mr. Williams: I thought it was 9:30 on Wednesday morning for the private bills. Has it been moved back to 10 a.m.?

Mr. Chairman: There was a discussion. I believe it was 10 a.m., the regular time, Mr. Williams. Is it in order to start the estimates at 10:30 a.m.?

What is Mr. Williams' motion?

Mr. Williams: Simply to proceed with the estimates.

Interjections.

Mr. Chairman: Mr. Williams moves that the committee proceed forthwith with the estimates of the Ministry of Consumer and Commercial Relations.

That is in order, gentlemen.

Hon. Mr. Walker: Just before you close off the last gavel, you may find some of the comments I was to deliver in my opening statement end up being reported. I was given assurance--almost in blood, I thought, yesterday--by members of the committee on record that our matter would proceed, with at least the opening statement having been dealt with in total today. As a consequence of that, on the way into this meeting today, the

opening statement was distributed. The opening statement has not quite been read today. I was acting on the basis of the opposition members of the committee, who had given the assurance yesterday that the matters would be dealt with.

Interjections.

Mr. Bradley: We forgive the minister. It is not his fault.

Hon. Mr. Walker: New matters have arisen. I am going to have to now change all my opening statement in the light of coming on Wednesday of next week, so I will have to go back. But you may see the odd thing that appears in the odd newspaper. Probably the only one to print it will be the Timmins Press or something.

Mr. Bradley: Are you saying that the newspapers already have a copy of your opening statement?

Hon. Mr. Walker: Yes.

Mr. Bradley: Well, could we obtain a copy of your opening statement the newspapers have?

Hon. Mr. Walker: Then you will not come to the opening meeting.

Interjections.

Mr. Bradley: I assure you we will be here, Mr. Minister.

Hon. Mr. Walker: What I am going to have to do is to completely change my opening statement to make it totally different for next Wednesday.

Mr. Bradley: You say on this bright and sunny Wednesday and instead it is a bright and sunny Thursday.

Mr. Chairman: Mr. Minister, would you provide the committee with that, and may we adjourn to the House?

The committee adjourned at 5:48 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS, 1980:

CO-OPERATIVE HEALTH SERVICES OF ONTARIO

ASTRA/RE-MOR

FRIDAY, OCTOBER 16, 1981



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Orlisle PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
Laughren, F. (Nickel Belt NDP)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Philip, E. T. (Etobicoke NDP)  
Piché, R. L. (Cochrane North PC)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Bradley, J. (St. Catharines L) for Mr. Wrye  
Swart, M. (Welland-Thorold NDP) for Mr. Laughren

Clerk: Forsyth, S.

From the Ministry of Consumer and Commercial Relations:  
Walker, Hon. G., Minister

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, October 16, 1981

The committee met at 11:49 a.m. in room No. 151.

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:  
CO-OPERATIVE HEALTH SERVICES; ASTRA/RE-MOR  
(continued)

Mr. Chairman: Gentlemen, we have a quorum in place. We have in front of us the motion of Mr. Bradley.

Mr. Philip: Mr. Chairman, in the light of Mr. Williams' speech last night, since members on this side of the House are being paid from the public purse, is it okay if we attack the government?

Mr. Chairman: I have no idea what you are talking about, Mr. Philip.

Mr. Philip: You were there; maybe you were just asleep.

Mr. Chairman: Regardless of that, I think we were in the midst of Mr. Williams speaking or were we in the midst of your speaking?

Mr. Philip: I had concluded.

Mr. Chairman: We have three more people who wish to speak: Messrs. Williams, Cunningham and Swart. I take it that is all who wish to speak on this question. We have an hour and 10 minutes and we have one further motion.

Mr. Williams: You have two.

Mr. Chairman: I am questioning whether your motion is necessary, Mr. Williams, since the consensus was last time that we would proceed on Wednesday morning with the private bills and the estimates.

Mr. Williams: I will leave it before you as it may be necessary--

Mr. Chairman: But I think you will agree, we do not need to allow time for it. Would that be correct?

Mr. Williams: That is up to whether people want to speak to the motion. I cannot determine that.

Mr. Chairman: The point I am trying to make is, I think it is established we are going on with the estimates Wednesday morning regardless of your motion.

Mr. Williams: I would hope so. But it was stated the other day we were going on with the estimates and that did not



materialize. To ensure that this will occur on Wednesday, I want this motion left on the table.

Mr. Chairman: May I limit the next three speakers to 10 minutes. The chair is going to take the liberty of considering this like the estimates, since we are leading into the estimates, and allocate the time. So shall each of these speakers take 10 minutes each, which takes one-half hour? That leaves 40 minutes to speak to Mr. Cunningham's motion.

Mr. Williams: I thought we were discussing that yesterday.

Mr. Chairman: Yes, that is correct. Ten minutes for each of the three speakers who wish to speak to Mr. Bradley's motion on the Co-operative Health Services of Ontario.

Mr. Williams: I am not going to take 10 minutes. What I would say with regard to the motion is basically what I have said with regard to what was substantially the same motion that had been discussed at some length, introduced earlier by Mr. Bradley, that touched on the Re-Mor matter and was framed in the same way.

Mr. Philip: This is the third disaster; Re-Mor was the second.

Mr. Williams: The fact of the matter is that this motion is, in my judgement, equally frivolous because of its redundancy. All these matters can be discussed in the estimates of the Ministry of Consumer and Commercial Relations. There is full opportunity to discuss any of the minister's practices and procedures that would touch on any matter of licensing of insurance companies or other related organizations.

To put this motion forward does not serve any useful purpose. For that reason it would appear to be appropriate not to support this motion before us at this time.

Mr. Cunningham: I will try to be as brief as I possibly can. Mr. Chairman, if this is not the forum for discussion about the inadequacies and the failure of certain mechanisms within the ministry, then I do not know what the forum is.

Mr. Williams: It is a forum; deal with it during the estimates.

Mr. Cunningham: Pardon me?

Mr. Swart: You cannot move motions in estimates and accomplish what you want. You know that or you should know that.

Mr. Cunningham: Mr. Chairman, this particular matter is almost as complex as the failure of C and M Financial Consultants and Re-Mor. I do not believe that they can be discussed in the adequacy that is required within the scope of the ministry's annual estimates.

Hopefully, these are extraordinary circumstances. They are

indicative of perhaps an occasional misadministration or maladministration in the ministry, but the parallels are all too similar: the same division of the ministry; one company shut down, opened up the next day under the auspices of another name, the only difference being the transfer of \$1 and a commitment to set up a dental scholarship for, hopefully, a needy dental student, and I don't know if that ever transpired.

The analogy to the failure of C and M Financial Consultants and the licensing in a matter of days of the same principals for a position of trust under the Mortgage Brokers Act is too much of a sad coincidence for my liking.

It speaks of a litany of mismanagement within that particular section of the ministry. I would expect that Conservative back-benchers, particularly newly elected members, would want to see that these matters are fully and openly explored early in this four-year term, to examine these questionable practices that went on, not with the idea of dealing out punishment or conducting this committee as a court, but rather to investigate these serious deficiencies and questions about the people operating that particular ministry.

The Delta Dental licence and the Co-operative Health Services licence have consistently been a difficulty and a problem for that ministry, yet, notwithstanding very hard core evidence, they continued to be licensed.

What is particularly disappointing is not necessarily the failure of the company but the response of the minister in charge during the course of the election. Mr. Drea initially started by blaming the bank; he blamed the Canadian Imperial Bank of Commerce. Then he decided the company was all right until it suddenly was taken over by sharks. He then called it a scam.

Then finally the last stop that he made was he blamed the select committee on company law, who were revising the accident and sickness insurance for Ontario and whose report is anticipated, for not spotting these people and not making the recommendation right off the bat that the prepaid medical health care insurance be terminated or repealed.

Notwithstanding, I think the excellent performance by one participant under that act, the Blue Cross, rather than look at the inadequacies of his ministry in the failure of Co-operative Health Care and Delta Dental, he chose to lump all of them in the one pot.

In the newspaper clippings--perhaps the member for Sudbury (Mr. Gordon) was not able to read the Toronto Sun during the course of the election, although I do not know whether he missed anything--"Drea Blasts Bank Over Co-op Failure," and the headlines continue all through the piece. It is a litany of buck passing, irregularities, and it is something, I think, that should be explored in a more detailed way.

If the members would, I would like possibly to pass along to them the letter from the Minister of Consumer and Commercial

Relations dated March 1, 1974. I have made some copies so that they could take a look at it. This is as early as 1974 before, I think, with the exception of Mr. Newman here, any of us were elected to the assembly. It is a letter to Mr. Richard J. Roberts, the solicitor for Delta Dental at the time.

"Dear Mr. Roberts:

"I refer to your letter of January 25 and our subsequent telephone conversation in connection with the same. It is our view that the agreement with the Employers Reinsurance Corporation entitled the Quota Share Reinsurance Agreement, if implemented, would mean that the Delta Dental Plan Incorporated would be ineligible for continued registration under the Prepaid Hospital and Medical Services Act.

"Our reasons for so stating are as follows:

"Reinsurance removes the potential benefit to the subscriber that exists where a nonprofit association has the ability to return profits, i.e. passing on savings to or for the benefit of its subscribers. Reinsurance removes that benefit because a commercial reinsurer has to make some profit.

"In view of the problems posed by the experimental nature of dental insurance, for which the loss ratio is not yet predictable, the size of the proposed Chrysler contract (in excess of \$2.5 million per year), the inexperience of the dental operation, the surplus of the Delta plan (approximately \$70,000), even with reinsurance, are not adequate.

"The effect of reinsurance with a commercial insurer would be to allow the association to act as agent for the insurer contrary to the intent of the act"--here is the deputy superintendent of insurance telling them that what they want to do is contrary to the intent of the act--"whereby licensed insurers are excluded from the definition of an 'association.'

"Accordingly, the contract with Chrysler is unreasonable for the reasons mentioned in numbers one to three above.

"I believe you are aware of the conditions of registration, accepted by your client, which is a flexible aid to the exercise of our discretion in determining adequate reserves, that the amounts received from subscribers in any one year should not exceed four times the unimpaired equity of the association. We do not think this reinsurance agreement, as contemplated, allows the reinsurance premium to be deducted from subscriber premiums in determining whether the reserves fall within this guideline. Indeed, the fact that the reinsurance agreement could be terminated by the reinsurer on notice shorter than the term of the proposed contract and that the reinsurer need not be responsible for existing claims beyond the termination of the subscriber's contract or its first anniversary subsequent to termination of the reinsurance agreement, would prevent this deduction.

"The decision of the superintendent in this regard has



already been communicated to the Delta Dental Plan by letter of January 24, 1974.

"Under the circumstances, unless the association is prepared to cancel the reinsurance agreement it would be necessary to impose cancellation of this agreement as a condition of continued registration under section 9(2) of the act.

"Yours very truly, Murray Thompson, Deputy Superintendent"--at the time.

12 noon

There you have the first indication, on March 1, 1974, as early as seven years ago, that the superintendent was prepared to cancel the registration of that company. I would leave copies of this with the members of the committee if they want to read it.

We move on to a letter of June 10, 1976. This is by Mr. Thompson and he, by this time, is the superintendent of insurance. If I could, I will just read the last part of what is a very complex letter. This is to Dr. Ellis, the president of Delta Dental.

"To avoid any misunderstanding on your part, I have set out in this letter the reasons for my proposal at some length. This letter and the enclosures furnish you with full information as to the reasons and as to the material upon which I am relying in putting forward the proposal"--the proposal is to take away their charter--"which I assume are available to you.

"If you object to these proposals, I should be glad to afford you a hearing, at which time you will have an opportunity to submit material and to make representations in support of your objections. It is important, however, that there be some finality to the matter, in order to protect the public"--and that is what we are here for, gentlemen, to protect the public--"as it appears there is a risk of loss."

This again is 1976 and the superintendent has determined that there may be a risk involved.

"Therefore, if you wish to have a hearing, I would ask you to file with me a notice requesting the hearing within 15 days of the mailing of this letter. If you file such a notice, we will then make arrangements to hold a hearing as soon as possible, but affording time for you to prepare for it. I should remind you that you may appeal from my decision to the divisional court. This appeal would be based upon the record of materials before me, and you should bear this in mind in determining the material you may wish to file with me.

"If you do not file with me a notice requesting a hearing within such 15 days, I will act on my proposal and refuse to renew the registration of Delta Dental Plan of Ontario, and designate it as an association to which the act continues to apply, in accordance with section 9(3) of the Prepaid Hospital and Medical Services Act.

"Yours very truly, Murray Thompson."

Thoughtful people within the ministry, concerned about the misadministration of this particular company, were kind enough to make sure that people outside the government had a copy of the files pertaining to the failure of this company. I have here just a list of the document index from Mr. Thompson's ministry and there are indications as early as 1972 that there were difficulties with this company.

We have investigations, we have proposals to decertify the company, letters back from the company saying, "Should we go the political route to avoid the intentions of Mr. Thompson to shut this company down?" Notice of a hearing of June 29, 1976, the decisions to which I have made reference, the company then went to appeal, they lost the appeal in the divisional court.

They went to appeal that and one day, several days after the application for appeal, they moved what little assets there were in Delta Dental into Co-operative Health Services, the same format, the same type of operation as the Astra/Re-Mor/C and M fiasco--shut them down one day and open them up another day.

My contention is that the public have not been well served by this process. Mr. Williams is correct when he argues that the general manager of this particular company, a Mr. Clark, has been charged and that the judicial process will deal with him. That does not speak to the procedural inadequacies that continue to exist within this ministry.

We have heard the sad story of Argosy Finance and their failure, Astra/Re-Mor, and now this. I think it is important for this committee to involve itself in a meaningful discussion, and hopefully on a nonpartisan basis--I believe that that could be accomplished--to examine in detail the events leading up to the failure of this particular company.

That is our job as members of the Legislature. It is not our job to judge whether Mr. Clark is guilty or not guilty, or whether someone maybe should obtain some benefit by way of a civil process in the failure of Delta Dental and Co-operative Health Services, but rather to look at the events leading up to how this particular company was licensed in the first place and how that licence was sustained year after year by the ministry, cognizant of the fact that they were operating with some very real difficulty.

Yesterday my colleague, the member for St. Catharines (Mr. Bradley), indicated some of the financial difficulties that they were going through--that their administration expenses continued to increase in a disproportionate fashion to the premiums earned, thus putting their ratio far out of whack. I do not think it would be unfair to suggest that this was a very elaborate fund-raising mechanism and that certain individuals within the confines of the company were benefiting in an extraordinary way. It would seem that Co-operative's administrative costs ranged between 20.7 and per cent 41 per cent of the premium income, with no discernible effort to reduce their difficulties.

After Co-operative took over Delta Dental, the company reported the following performance: operating profit in 1977, \$340,000; other income, \$500,000. The other income consisted largely of income from investments and these investments certainly were questionable and, I do not think it would be unfair to say, outside the confines of the guidelines in the legislation for that act.

In concluding, Mr. Chairman, I want to say to you that I am frankly disappointed that this company was licensed on a continuing basis by the ministry annually, but I am more concerned about the response of the minister at the time, Mr. Drea, with regard to the area of fault and just what happened here.

The minister blamed the Imperial Bank of Commerce, he cast aspersions on their propriety, in my view; he said that the company was all right until it was taken over by "sharks." I do not know what that means, what that kind of diction contributes to the understanding of this process, but the reality of it is that the company, from the very beginning, and at least by 1975--and we have the facts here--was continuing to suffer from irregularities, irregularities that were inclined to cause the superintendent of insurance to want to cancel their charter. Ultimately the charter was cancelled only when the company was right on the rocks, and when that happened, the officials in that ministry were, as usual, asleep again.

I do not believe that we should be giving away licences for either trust companies, or applications for licensing under this particular act, like dog licences. It is not a matter of walking in with your \$10, putting it down, and getting something that you can put around Fido's neck. These positions involve privileges and trust, and the province has a responsibility. Whether it is the Mortgage Brokers Act, the Real Estate Act, the travel act, the Loan and Trust Corporation Act, the ministry has a responsibility to make sure that the people who are applying are in fact fit--and that is where we had a problem with Astra and Re-Mor and C and M Financial Consultants--and moreover, that once they are licensed and they obtain that privilege and trust, they adhere and conform to the regulations, on a regular basis, and the legislation that we have determined to be the law of the land in Ontario.

When that process fails, gentlemen, it is our function, our responsibility, as members of the Legislature, to investigate what went wrong. I put that to you. I hope that more particularly the newer members from the government party on this committee will be sufficiently and genuinely concerned about the failure of this company to support the motion that has been made, the motion that is before you, to afford us the opportunity of taking a very long look at what went wrong here.

I do not believe that this motion is in any way premature or redundant or irregular or out of order at all, and I encourage you to support it.

Mr. Swart: Obviously I am going to support the motion we have before us for this investigation into the failure of Co-operative Health Services. It has already been mentioned by two



or three people that it follows the same classic lines as did Re-Mor and associated companies, as did Argosy, and this, as my colleague Mr. Philip pointed out, as the third, within three years, shows the same classic faults of apparent bumbling and negligence on the part of the government. It seems to me that it should be investigated by this committee to get to the bottom of the issue, not necessarily from a legal point of view, but to determine the action of the government in this particular instance.

It is the blocking of these investigations by the majority here that makes one wonder sometimes if the United States' system, which provides for these in-depth investigations by committees, with cross-examination and all the rest, perhaps is not a good way for a government to be run.

We have Mr. Williams saying, "Well, we can do all this in estimates." He knows very well that we have not got the same freedom in estimates. How can you move in estimates, for instance, that you should bring Mr. Peter Clark before this committee, if you want to bring him here? You know that very well. You know very well you cannot move motions that you might want to to dispose of the situation one way or another.

So if we really want to get to the depth of this matter, we are going to have to do it by a special investigation, Mr. Chairman, as proposed by this motion. I think it is warranted.

I do not just say that because my former colleague Mike Davidson, when the revelation was made about Co-operative Health Services, said that if he was returned he would be moving that it be the subject of investigation by this committee. I do not say that solely because my colleagues Ed Philip and Jim Renwick, took the action in the House that speedily brought about the freezing at least of the assets of Mr. Clark, the only constructive action that has been taken on this issue to date. I propose this simply because I think it needs this in-depth investigation.

As has already been pointed out, 140,000 people are affected by what happened with Co-operative Health Services. Some of them have been bailed out one way or another, but there are still a lot of people that were hurt and are still hurting. There are some \$3 million or \$4 million involved in the collapse.

Perhaps more importantly, we have all the evidence before us--at least all the reports before us, by newspapers and others--that ministry officials knew full well the serious situation that existed with regard to the Co-operative Health Services long, long before it collapsed, and nothing was done.

I have a clipping here from the Globe and Mail dated, I believe, February 12, in any event around that time, which states: "A departmental investigation of Co-operative revealed the improper investments before Harry Terhune, deputy superintendent of insurance, renewed the firm's licence on April 1, 1980. Nine days later, Mr. Terhune wrote Co-operative's president, outlining the faulty investments revealed by the investigation and warning that, 'unless some positive action is taken soon, I can foresee

Co-operative having great difficulty in meeting its obligations in the not-too-distant future.'

"Three months later, Co-operative had virtually collapsed, documents revealed. Those documents also showed that Mr. Terhune was not aware of the collapse until the following October." It seems rather important to me that we should be asking Mr. Terhune very incisively, when he knew these circumstances prior to April, why he did not even know that the firm had collapsed until October. A very logical question would be, why was he not conducting an ongoing investigation into this firm's activities?

Mr. Philip: Another logical question would be what do you know about selling stationery, because there may be a job waiting for you.

Mr. Swart: Also the documents report that the superintendent knew about the circumstances, in fact, not just nine months before it collapsed or 10 months before it collapsed, but two or three years before it collapsed, and the 140,000 people lost their money. When the superintendent and the assistant superintendent knew of this company's situation, relicensed it under these circumstances and then did not do the follow-up work to see if it was getting into deeper trouble, I suggest it indicates some pretty serious negligence on the part of the superintendent and his assistant, and, for that matter, the ministry as a whole--when there have been two other situations which were almost identical to this.

I would think that we should ask Mr. Peter Clark, as has already been said, some very pertinent questions before this committee. How did he get this relicensing? Did he have some special contacts with ministry officials that permitted him to get relicensing and not to be strictly supervised thereafter when the ministry knew they were in that much difficulty?

It is pretty important to have him before this committee. I would like to ask him, for instance, if he has any political affiliations, and if so, where they are. Because this matter of the collapse of Co-operative Health Services either shows colossal negligence or else some collusion which should not have been used in getting the licence and carrying on the business.

We may be able to get from the minister--Mr. Chairman, I do not have it at this time, but certainly we will be asking that in estimates--what the situation is at the present time with regard to the total losses and to the 140,000 people, how many have had to pay their own hospital bills, their own medical bills? What companies have had to subsidize the government because it bumbled and was guilty of gross negligence in this whole issue?

I just say, Mr. Chairman, that this is worthy, when we have had three of this same type, when one has been investigated to the point where even government members said that the negligence of the government was such that the investors should be paid off--that was said by members of the Conservative Party, who sat on this committee. When the one investigated has been found to be that serious a situation, it seems to me that we should get to the

bottom, the very bottom of this one. We should know what has been taking place in the ministry and if that means that some heads should fall, then we should know it.

Even a legal case--and I know that the opposition is saying, "Once again, the courts should decide these things." The courts will not decide whether there are members of the ministry's staff who should be displaced. We can only do that by an investigation. Therefore I fully support this resolution by my colleague from St. Catharines.

Mr. Chairman: Thank you, Mr. Swart.

Mr. Swart: I stayed within my 10 minutes.

Mr. Chairman: Yes. I noticed that and I thank you for that. There being no further speakers, the question will now be put as to Mr. Bradley's motion. All those in favour of the motion--

Mr. Bradley: Recorded vote.

Mr. Chairman: Recorded vote, Mr. Clerk.

The motion was negatived on the following vote:

AYES

Mr. Bradley, Mr. Cunningham, Mr. Philip, Mr. Swart.

NAYS

Mr. Gordon, Mr. Kolyn, Mr. MacQuarrie, Mr. Piché, Mr. Shymko, Mr. Williams.

Ayes, 4; nays, 6.

Mr. Chairman: The next motion--Mr. Cunningham has a motion.

Mr. Cunningham: I would like to put my motion, but in advance of that, we have a comment from Mr. MacQuarrie indicating that the minister may favour us with all the information on this. Why has he not done so in advance? I do not why we have to go through these dog-and-pony shows to obtain the truth and to afford the public an understanding of how these things happened, but I want you to know that I do not think it does the process a great deal of credit when we have this kind of response to a request to see something investigated, that should be investigated in the public interest.

Now you tell us that the minister is going to favour us with some kind of response. Why could he not have done this in advance? We have asked in the Legislature, in view of the fact that this company has failed, that he would have an obligation to table all the information he had with regard to the role of his ministry. When members of the opposition use the word "cover-up"--and I do not like to use it--it is not well received by members of the government party, but what else are people to conclude, especially



when members come in here--and I do not mean to disparage the decision you have made to vote against the motion--but you appear to be disinterested. Mr. Piché was reading press releases--

Mr. Chairman: Mr. Cunningham, could you--

Mr. Piché: Just a minute now. I have been here for a long time and who reads newspapers all the time on the other side? We do not say anything. I have seen you people read newspapers day after day and I have never brought it up. Why is he mentioning that I--maybe what I was reading is something that you were saying--

Mr. Cunningham: Maybe you should read the file.

Mr. Piché: You were talking about documented press clippings.

Mr. Chairman: Gentlemen, order.

May we have the motion Mr. Cunningham is--

Mr. Williams: It is too bad the full Liberal caucus does not come out to show they are--

Mr. Chairman: Mr. Williams, that is another gratuitous remark. Mr. Cunningham, would you please put your motion so that discussion can be--

Mr. Cunningham: Maybe I should wait until the government whip comes in so that he can tell the members what to do on it.

Mr. Piché: I am the official--

Mr. Cunningham: I see. Very good. Now that the deputy whip is here, I will make my motion.

Mr. Chairman: Mr. Cunningham moves that this committee meet in-camera as soon as possible to examine the receiver's report on the failure of Re-Mor.

Mr. Cunningham: I would like to speak to that motion when I have the opportunity.

Mr. Chairman: Yes. Would you carry on, please, Mr. Cunningham?

Mr. Cunningham: Mr. Chairman, we have had a myriad of various reasons, which I would categorize to be excuses, for the inability of this committee to do what it is supposed to do, and that is to investigate in the public interest some of these failures. I am frankly attracted to some of the logic which has been put forward by the Conservative Party.

We do not want to impair Mr. Montemurro's trial or the other eight individuals who are charged, nor would we like to interfere with the civil process and impair in any way the ability of people to recover moneys we think are entitled to them. What we are

concerned about, again, is the process, the events that led up to the licensing and the continuation of companies, that the evidence would adduce, were not fit to be licensed in the first place--

Mr. Piché: Mr. Cunningham, if you would like to turn around, Mr. Philip is reading a newspaper.

Mr. Philip: I am listening.

Mr. Cunningham: What I would like to do, Mr. Chairman, to afford members of this committee, in camera, an opportunity to hear an impartial and objective analysis of what went on and the most current analysis of how this process evolved and possibly where some of this money went so that we might understand the severity of the problem, not so far as it involves the loss of money by individuals, but as it relates to the licensing process and the administration of the business section in the Ministry of Consumer and Commercial Relations.

I would like to read for you part of a letter dated February 24, 1981, which I have already shown to Mr. MacQuarrie, which is directed to Mr. Crosbie, the deputy minister, and to Mr. Humphrys, the superintendent of insurance in Ottawa, and as well to Mr. John Close, who is the president of the Canada Deposit Insurance Corporation. This letter is from Barry Brace, the vice-president of Deloitte, Haskins and Sells, one of the most respected chartered accountants in the business. He says:

"As you are aware, we are both the trustee in bankruptcy under the Bankruptcy Act of Re-Mor Investment and Management Corporation and the court-appointed receiver and manager on behalf of the interests of all the investors involved in Re-Mor Investment Management Corporation. Following various discussions we have had with each of you, we would like to present our suggestions on what steps might be considered for the resolution of the investors' position in Re-Mor. These views are presented without prejudice in the hope that a sensible resolution may be reached on a co-operative basis.

"A comprehensive investigation is being carried on by the various receivers and liquidators, several police departments, ourselves and others into all aspects of the affairs of Re-Mor/Astra Trust and their affiliates. A few of the findings of the investigation have recently been made public in hearings before the justice committee of the Ontario Legislature and we are facing increasing pressure to issue an interim report on our receivership. There are a number of major issues which have not been fully resolved, including questions of possible criminal activities. However, we will confine ourselves in this letter to civil matters. They include:

"(i) the quantum of realization of the mortgage portfolio of Re-Mor and the recoveries of ancillary damage claims and tracing remedies;

"(ii) the precise extent of the liability of Canada Deposit Insurance Corporation to pay deposit insurance to the investors in Re-Mor;

"(iii) the liability of the federal crown and provincial crown in respect of the alleged negligence in licensing, monitoring and regulating the operations of Astra Trust Company and Re-Mor; and

"(iv) the extent, if any, of improprieties in the licensing and regulating of Astra Trust Company and Re-Mor.

"The first issue is being fully attended to by ourselves. There is a very free exchange of necessary information with other authorities and these matters will continue to their natural conclusions.

"With respect to the Canada Deposit Insurance Corporation, we have concluded that there is a clear liability to insure some of the Re-Mor investors; in particular those who were directly transferred from positions as depositors in Astra Trust Company, frequently without their consent or with consents that were obtained by fraud. This would include most of the personal investment account holders, aggregating approximately \$800,000.

"Further, the receiver and manager has been advised by its counsel that, beyond these specific clear cases, there is a substantial cause of action by all Re-Mor investors against the Canada Deposit Insurance Corporation. This cause of action would seek to integrate Re-Mor into Astra and to establish that as a matter of law, all Re-Mor investors are entitled to be treated as depositors in Astra.

"This is an exceedingly complex area of law on which there is little or no case law authority in Canada. This legal argument has been advised to Canada Deposit Insurance Corporation and is being seriously considered by their counsel. Unless negotiated arrangements can be reached to indemnify the investors that we represent, it will be necessary for us to pursue these claims.

"With respect to any allegations of negligence by the two levels of government in the licensing"--and this is the more salient point, gentlemen--"and regulating of Astra Trust Company and Re-Mor, we are led to conclude:

"(i) There were facts available to various government officers which, if they had been properly integrated, would have suggested that neither Astra Trust Company nor Re-Mor should have been licensed;

"(ii) There were, from the beginning, repeated incidents, breaches of undertakings and breaches of licence conditions which indicated a clear and present danger that the principals of the trust company were functioning without any concept of fiduciary obligation. Opportunities presented by these warnings to conduct a thorough investigation, rigidly control the operations, correct the improprieties or ultimately close the operations were not taken. Decisive action was not taken by any level of government in the face of those repeated opportunities until the depredations were too far advanced;



"(iii) There was jurisdictional confusion between the responsibilities of different levels of government, as well as those of different departments and authorities. This confusion was a major contributor to the damage that occurred."

That, gentlemen, is a specific reference to the province of Ontario.

"We are of the view that there is an urgent need to review both the legislative framework"--this is February 1981--"and the operating procedures concerning the regulation of these types of financial intermediaries.

"Against this background, we would like to suggest a means of resolving the investors' positions"--and I will not get into the proposal. Some of you, Mr. MacQuarrie maybe, have had an opportunity to see that. Quite frankly, the proposal that he advanced was supported by the Deputy Minister of Consumer and Commercial Relations, and it is a credit to his objectivity and his interest on the behalf of Re-Mor people that he moved as quickly as he did.

12:30 p.m.

Mr. Brace concludes: "You may wish to establish some preliminary understandings of the ultimate financial responsibility. A possible arrangement might include the federal and provincial governments agreeing to accept equal responsibility for all amounts in excess of those ultimately found to be deposit insurance responsibilities of the Canada Deposit Insurance Corporation. This is provided only as a suggested general framework for all parties to consider. Obviously in the event of agreement on substantive points, there are a number of details which should be considered and quickly resolved.

"Should you see any merit in this general outline, our offices and those of our solicitors, Jones and Waugh, remain available for further discussions.

"Yours very truly, G. B. Brace, Vice-President."

I might digress and tell you that it was my suggestion, made some six or eight months earlier to the superintendent of insurance--in fact, I believe July 27, 1979--that that very formula be considered to extricate ourselves from this very sad mess. That was before the justice committee was seized with the responsibility of investigating these problems.

Mr. Chairman, you have been very kind in allowing me to continue. I just want to conclude by reiterating the concerns expressed by Mr. Brace about the role of the provincial government in this.

He said there were, from the beginning, repeated incidences of breaches of undertaking, breaches of licence conditions, breaches of fiduciary obligations, lack of proper investigation, lack of rigid control of the operation, not taking advantage of

opportunities to close the company down, decisive action not taken by any level of government--that includes the Ontario government--in the face of these opportunities until the depredations were too far advanced.

"There was jurisdictional confusion between the responsibilities of different levels of government, as well as those of different departments and authorities." That is a reference to the Ministry of Consumer and Commercial Relations, business practices section, and the Ontario Securities Commission. I think that reference must be very clear.

Gentlemen, these inadequacies remain; the problems remain. We could be faced with another situation like this in the very near future.

We should take a look in camera at the receiver's final report on this which has been made, and involve ourselves possibly in a morning's or afternoon's discussion--notwithstanding the civil cases and the criminal case in process right now--to see what advice we might make to the ministry to see that these kinds of difficulties do not happen again. I want to stress to you that my motion says we will meet in camera to discuss this particular report.

The response may be that the receiver's report is not available to the committee because of the nature of Mr. Justice William Maloney's order. I would suggest to you that a letter from the chairman of this committee and/or a Speaker's warrant would see that the committee obtained this report. Of course, the committee would honour the spirit and the letter of Mr. Justice Maloney's order by not making the report public and by discussing it in camera and not involving ourselves in a public harangue on this.

The legislative process would be very well served by the suggestion I am making and might give to all of us some clarity and some understanding about how these events transpired.

From talking to solicitors for Re-Mor people it is my understanding that the report is extremely comprehensive, that it is very well done as well as impartial and objective. I do not think that anybody could question the objectivity of Mr. Brace, who is a senior officer with a very respected firm, nor the partiality that that individual would have.

If members of the Conservative caucus here today are taking their responsibilities seriously in this matter, they will support this motion.

Mr. Swart: It will come to nobody's surprise that I and my colleague in this party will be supporting this resolution too. We have taken the stand all along that we should have maximum information. It is obvious from the letter read by Mr. Cunningham that the receiver probably can provide information to this committee which will be of real use to it in considering this whole matter.

If I could have Mr. Cunningham's attention--

Mr. Cunningham: Yes, sir.

Mr. Swart: --I assume he intends that the receiver would be here at that time when we are considering his report, although it does not specifically state that. Am I right?

Mr. Cunningham: If the chair would permit a response to that, it does not really make that much difference to me. I would merely like to see the report. If the committee then felt it was instructive to have Mr. Brace appear before us, again in camera, then I would certainly support that. But I did not want to change my motion, Mr. Swart, because I felt that just a cursory examination of his report might suffice. I did not want to prejudge what the committee might want to do after we had an opportunity to take a look at his report in camera and possibly discuss it briefly.

I do not know if Mr. Brace would want to amplify on his report. I would think that his report would be as complete as his preliminary report, to which I made reference. I do not necessarily think that we have to require Mr. Brace to appear before us, but I do hope that we could take a look at his report.

Mr. Swart: There would be some advantage to having the receiver here, however I do not intend to move an amendment to the motion. If we are fortunate enough in having this reasonable and responsible motion passed by this committee then when we get that report we can determine whether we should have the receiver here.

Although the report may be full and complete, there are matters contained in the letter read by Mr. Cunningham--if I heard it correctly--about relationships between the province and federal government. I would like to get some opinion from him about those various responsibilities. I think we might be able to ask him some questions that would be valuable.

In this whole matter of the Montemurro investigation, particularly Re-Mor, the receiver has to be one of the key people. There can be no question about this. He has access to more information, certainly about funds and probably about what happened internally within the ministry, than anybody else. I know that previously the member for St. Catharines--and I think I am right in this--moved a motion that the receiver be brought before this committee and it was turned down. I think that was a mistake. He is, as I stated, a key person. If we want to get any more information on Re-Mor, he is the person we should have here.

This resolution provides that we will be in camera, so all the objections which have been put up by the Conservative members in the spring and now with regard to confidentiality and the effect that having these documents before us and discussing them would have on court cases does not apply in this case. In view of the fact that their whole opposition, their whole objection to proceeding with the investigation, was based on that, I am sure that they will now support the resolution we have before us.



Mr. Williams: Mr. Chairman, all of us on the committee have been interested in the Re-Mor issue and have taken a genuine interest and concern in a speedy a disposition as possible on the whole matter. We would be equally interested in seeing the receiver's report as being most germane and relevant to the whole issue.

However, the fundamental thing that is being overlooked here is the fact that while undoubtedly the receiver's report will play an important role as the whole story unfolds, what has yet to unfold in this whole issue is something that will unfold in another forum, in another jurisdiction.

12:40 p.m.

We have the litigation that is in process. We have now the Ombudsman seized of the issue. Obviously these other jurisdictions will be cognizant of and aware of the receiver's report and its relevance and importance to the whole process. If they are to fully and properly discharge their responsibilities in dealing with the issues on the Re-Mor matter that have been placed before them, the receiver's report will be something that will undoubtedly become part of their consideration.

It seems that some members of the committee continue to downplay or even sidestep the fact that this whole issue is being actively assessed and processed in a legal fashion before the courts and now the office of the Ombudsman has been brought to bear on the issue, that too I think is a significant new development in the whole matter.

Mr. Cunningham: On a point of order, Mr. Chairman, no such reference was made by this member or, I believe, by Mr. Swart in his comments. In fact, we chose to distinguish that situation.

Mr. Williams: You did not choose to distinguish it.

Mr. Cunningham: Yes, I have, and I believe if you checked the record you would understand that.

Mr. Williams: That is not a point of order, Mr. Chairman, that is a difference of opinion.

Mr. Chairman: What is the point of order, Mr. Cunningham?

Mr. Cunningham: I thought Mr. Williams, either deliberately or conveniently, has distorted our position. That is my point of order.

Mr. Chairman: I do not believe that is an appropriate point of order. Mr. Williams, carry on, please.

Mr. Williams: I think that with the considerable progress being made in the courts on the issue, and the Ombudsman now also involved in the issue in toto, it would surely be inappropriate for this committee to try to take part in one aspect of the process and try to conduct an examination, whether it is in camera or otherwise. Either you have charge of the whole issue, as

the courts and the Ombudsman do, or you leave the issue alone, to let those who have full responsibility for it do their job without interference or interruption.

So under the given circumstances at this point in time, given the activities in these other areas, it would be inappropriate for this committee to consider attempting to deal with one aspect of the Re-Mor issue. The motion before us on that basis, Mr. Chairman, I suggest is inappropriate.

Mr. MacQuarrie: Mr. Cunningham referred at some length to an interim report dated February 24, 1981, I believe it was, from Mr. Brace of Deloitte, Haskins, the trustee receiver. In that the receiver made certain recommendations with respect to actions to be pursued.

As I understand it, from statements made by the minister and others, most of these actions have been taken. Negotiations have been attempted, at least, to be carried out with the federal authorities to get the CDIC to assume responsibility for the portion of the losses that properly are attributable, not only to Astra but those Re-Mor investors who invested in the belief they were investing in Astra, but also Re-Mor investors generally, although I think it has been indicated that some investments had been made in Re-Mor before Astra Trust was, in fact incorporated.

The minister also indicated that, so far as deficiencies in the department were concerned, very definite and concrete steps had been taken to correct and tighten up the procedures. He mentioned the establishment of a very involved computer-managed and controlled system. He indicated that he would be prepared to discuss these matters with the committee and to answer any questions that the individual members of the committee might wish to put to him.

I think, too, that steps have to be taken to at least clarify the respective jurisdictions of the federal and provincial authorities in so far as some of these financial institutions are concerned, and I think some questions might very well be directed to the minister in that connection.

None the less, the question of Astra/Re-Mor is before the courts, both at the provincial level and at the federal level. A full disclosure of all events will certainly be made in the course of those proceedings. As has been already indicated by Mr. Williams, the Ombudsman is involved.

I am just now trying to sort out in my own mind as to-- We have evidence of an interim report. Do we have any evidence that there is, in fact, a final receiver's report, and why is that not now public?

Mr. Cunningham: May I respond to that?

Mr. Chairman: Yes.

Mr. Cunningham: Mr. MacQuarrie, yes, there is, and the

receiver made his report, I believe, several weeks ago, if not maybe a month ago or thereabouts.

Mr. MacQuarrie: Do you have a date?

Mr. Cunningham: I would think it was mid September when he made the report. As I said in my comments, and I am sure you were listening intently, Mr. Justice William Maloney has ordered that that report not be made public, but that access to it be limited to the crown law officer and to the solicitors for the interested parties in the matter.

My point was that the committee, I believe, and the Legislature, have an obligation to examine, not whether, as Mr. Williams might suggest, we should talk about some civil matter or some criminal matter that is before the courts or before the Ombudsman--I am delighted the Ombudsman is interested in it--but, rather to look into and to examine the legislative deficiencies that are alluded to quite clearly, and somewhat objectively, in his interim report of February 24, which I anticipate he has elaborated on in great detail.

This report exists. I would suggest that Mr. Justice Maloney would vary his order at our request, to allow us to look at it in camera. In fact, I have no doubt that he would vary his order for a committee of the Legislature to examine that matter in camera.

Mr. Shymko: You are presupposing that.

12:50 p.m.

Mr. MacQuarrie: It is somewhat unusual, but I suppose not entirely unexpected in a case where extensive litigation is pending, that a receiver's report should be held to be confidential, but that certainly is not the usual procedure.

Mr. Cunningham: This is an unusual case.

Mr. MacQuarrie: When a receiver's report goes back to the Supreme Court, bankruptcy, the report then is a public document.

If I get the main thrust of Mr. Cunningham's motion, we have an examination of a report before we even ask for consent to examine it and that it be made available to us by the court. I think, as Mr. Shymko has already pointed out, the motion certainly anticipates or presupposes certain action on the part of the court and I think more properly the motion should have been directed to that.

Mr. Cunningham: I think the motion is procedurally correct. If the committee in its wisdom and objectivity determine that we could examine the report, the next motion that I would make, with your approval, would be to direct the chairman to write to Mr. Justice Maloney and request the report. It is as simple as that.

I do not think we could turn it around and ask Mr. Justice



Maloney to give us the report if, in fact, the committee has not approved that we should take a look at it in camera. I believe I am correct in my procedure here and I do not think it is presumptuous on our part at all.

If we determine we are going to do it and Mr. Justice Maloney says he would rather we did not do it, or he said no, as Mr. Shymko seemed to think he would--I am at variance with that point of view--for other reasons, then I suppose there are other steps that we could take or we could abandon the action.

I do not think Mr. Justice Maloney, being the reasonable man he is, would refuse the justice committee of the Ontario Legislature the opportunity of examining the receiver's report in camera, subject to the same conditions and the same order that he has imposed on the solicitors for the interested parties. I think I made the correct procedural direction on this.

Mr. MacQuarrie: Mr. Chairman, it is my opinion that there is within the interim report enough information available to members of the committee to enable them to question the minister at length, and this is the main point I was trying to make. If the members of the Liberal Party are interested in seeing where deficiencies lie in the ministry, if any, and if they are interested in seeing what steps, if any, the ministry has taken to tighten up and eliminate any deficiencies, they have in the interim report enough suggestions by the receiver to question the minister to their heart's content on these topics and any related topics. The minister has clearly indicated to this committee that he is prepared to answer and deal with these matters to the entire satisfaction of the members of the committee.

Mr. Cunningham: On a point of order, Mr. Chairman, that is not relevant to the motion in any way. Of course, the members of the Liberal Party, and I hope all of us, are interested in pursuing the matter and trying to find out in what ways we can correct some of these deficiencies.

Mr. MacQuarrie: Exactly.

Mr. Chairman: Mr.--

Mr. Cunningham: Mr. Chairman, allow me to make my point, if you would. I ask you that courtesy.

Mr. Chairman: Fine, carry on. Do be on a point of order though, please.

Mr. Cunningham: I am on a point of order.

Mr. Chairman: Not yet you are not.

Mr. Cunningham: If you hear me out, you will find out. You are worse than the Speaker.

My point is that the position taken by the member is completely out of order and his comments had nothing to do with the motion. The motion relates to a meeting in camera to examine

the receiver's report on the failure of Re-Mor as soon as possible, so the members of the committee would have, not my opinion or your opinion, but rather the receiver's opinion.

Mr. Chairman: That is not a point of order, Mr. Cunningham. A point of order comes from the standing orders. Misinterpretations are not points of order.

Mr. MacQuarrie: I will conclude, Mr. Chairman, by saying that at this point in time I do not see any need to meet in camera to review the receiver's report. Possibly the reason why the in-camera suggestion has been made is that the receiver's report is directed largely to the federal authorities.

I move that the question be put.

Mr. Bradley: Mr. Chairman, as the person who originally moved the--

Mr. Williams: Are you on the point of order, because the motion was just made that the question be put?

Mr. Cunningham: We are into closure now, are we? Mr. Bradley wants to speak to the issue. Are you denying Mr. Bradley? Are you going to use the majority government that you have to deny Mr. Bradley?

Mr. Chairman: Excuse me, who is making the motion?

Mr. MacQuarrie: At the close of my remarks, Mr. Chairman.

Mr. Chairman: Yes, I only heard part of it. I apologize for that. Go ahead.

Mr. MacQuarrie: In concluding my remarks I moved that the question be put.

Mr. Piché: He was the last speaker, anyway.

Mr. Bradley: I thought I was on your list to speak at this time.

Mr. Chairman: Yes, you were, Mr. Bradley, next on the list, but Mr. MacQuarrie did have the floor and I believe he can properly move the previous question. Under standing order 36 while he has the floor he can move the previous question. As his concluding remark, he did say that.

Mr. Cunningham: We are adjourned, anyway.

Mr. Chairman: No, we are not adjourned. We have an agreement from yesterday--

Mr. Cunningham: We cannot sit while the House is adjourned unless we have the direction of the House to do that. You had better spend the weekend reading the rules.

Mr. Chairman: We have an agreement from yesterday. Mr.

Cunningham, judging by your standing orders and your points of order, you would do well yourself, after being here for seven years, to read the standing orders yourself. You show an abundant ignorance of the orders in your points of order.

Mr. Cunningham: The House has adjourned. That is what the bells are all about.

Mr. Chairman: You are correct.

Mr. Cunningham: And I accept your apology, Mr. Chairman.

Mr. Chairman: We are in the middle of a vote but we cannot carry on from the spring when we do not have unanimous consent of the members.

Mr. Cunningham: I accept your apology, Mr. Chairman.

Interjection.

Mr. Chairman: We are not in the middle of a vote.

Mr. Williams: Yes, the motion was put. We conclude the vote and then we are finished. The motion was put.

Mr. Cunningham: We have no authority to sit. We are adjourned.

Mr. Williams: You can leave if you wish, but we are in the middle of a vote. Make a note that Mr. Cunningham removed the motion and left the room before he even voted on it.

Interjection.

Mr. Williams: All right, let us vote.

Mr. Cunningham: I will stay as long as you want.

Mr. Williams: We will be completed when the motion is concluded.

Mr. Cunningham: We also have the opportunity, by way of the rules, to debate your motion, which we could do, and which in fact I intend to do when we resume next week.

Mr. Chairman: By analogy to the House, the chair is ruling that we cannot adjourn when a vote on the previous question has been put. It is not debatable, I believe that is in the standing orders, and we must proceed to a vote. This would override any informal agreement we have from the spring whereby we cannot sit past one o'clock except by unanimous consent. Therefore we will proceed with the vote--

1 p.m.

Mr. Cunningham: On a point of order, Mr. Chairman, I think you would be well advised to examine precedent on this. Various committees of the Legislature have found themselves in



very real difficulty when they have continued without unanimous consent past the hour.

Mr. Chairman: That is a point of order and it is not debatable. However the chair's ruling is not debatable.

Mr. Bradley: I do not think the chairman had accepted that ruling before the House adjourned.

Mr. Chairman: It was still on the floor. It had not been adjourned--

Mr. Cunningham: What you have raised is a matter of privilege in the House.

Mr. Chairman: Thank you, we would appreciate the clarification. Do you wish a recorded vote?

No, the committee is not adjourned. We are in the midst of a vote. There was a motion for the previous question on before the bells did ring.

Mr. Cunningham: You have not ruled on this motion, whether it is in order. You had a guy on the list. It is up to you as the chairman to rule whether that is--

Mr. Chairman: Yes, and I have ruled that we are carrying on with the vote, and obviously it is a vote as to the previous question as moved by Mr. MacQuarrie.

Mr. Cunningham: That motion is debatable.

Mr. Chairman: It is not debatable. Mr. MacQuarrie? The motion for the previous question to be put is not debatable unless, as I recall it, the chair wishes the assistance. Yes, put forthwith unless I wish it further discussed or wish assistance, and I do not wish further assistance. Therefore, it will be put forthwith. Yes, forthwith is in section 43. It is Mr. MacQuarrie's motion for the previous question to be put. Mr. Clerk.

Mr. Bradley: I cannot vote on a motion that would adjourn. It is not an abstention. It is four minutes after one.

Mr. Swart: I thought the motion was that the question now be put?

Mr. Chairman: Yes, that is correct, that is the motion.

Mr. Williams: I thought we were on the main motion, you are quite right.

Mr. Philip: Can you take it over again then?

Mr. Williams: The vote is as to whether the motion be put, correct?

Mr. Chairman: That is correct.

Mr. Philip: Since there is misunderstanding by members of both parties as to what was being voted on, you should repeat the motion again and take the vote over again.

Clerk of the Committee: Mr. MacQuarrie moved that the question be now put.

Mr. Swart: Mr. Chairman, again on a point of order, I do not know of any procedure whereby when you have a recorded vote and you start taking that vote that anybody has the opportunity to change their votes afterwards, to take it over again.

Mr. Chairman: I would so concur. I think it was amply clear in my response to Mr. Cunningham that we were dealing with Mr. MacQuarrie's motion that the question now be put.

Mr. Williams: I think, Mr. Chairman, with respect, that some of the members understood that they were voting on Mr. Cunningham's motion and I think that that has to be noted. So on that basis, Mr. Chairman--

Mr. Chairman: Do we have unanimous consent to commence the vote again?

Mr. Swart: No, I will not give that consent. We should know what we are voting on here. If we make mistakes when we are voting, that is our responsibility. We should know what is going on. I will not give unanimous consent to start the vote over again.

Mr. Chairman: The vote carries--

Mr. Williams: Wait, Mr. Chairman, with respect. No member of the committee is obliged to vote on a motion that he misunderstood and that he thought was another motion. The members can clearly withdraw if they thought they were voting on another motion rather than the one that was before them.

For you to instruct that we have to vote on a motion that we thought was different from the one that is being voted on is ludicrous. There is no way that you can force a member to vote on a matter once it has been clarified for him that we are voting on another matter.

So if the members who remained, I suggest, Mr. Chairman, do not wish to vote on the matters today and we vote on the matter of calling the vote, either we redo that when it is now understood that all members are voting on that, or we put it over to the next day, I am not going to argue the issue with you. But I thought you gentlemen, at least, were agreed that we try to conclude this matter today.

Mr. Philip: I am agreed that we should have the motion reput since obviously there was misunderstanding. The first thing in a parliamentary system is that members voice their opinion in a way that they wish to.

Mr. Williams: Of course.

Mr. Philip: We should have unanimous consent--

Mr. Piché: Well put together.

Mr. Chairman: Mr. Swart, again?

Mr. Swart: No.

Mr. Chairman: Mr. Swart is denying the committee his unanimous consent, and it is interesting to see Mr. Williams and Mr. Philip on the same side on an issue. I did not think that we would live that long.

Mr. Piché: That means we are making headway.

Mr. Chairman: I am sorry the chair is ruling, therefore, that we must continue on. The chair is also ruling--you can challenge the chair's ruling, but the chair is ruling that there was adequate notice of what the motion was and if the members, as Mr. Swart has said, were under a misapprehension, that is not the problem of the chair or the clerk to establish. So therefore I am ruling that the vote shall continue. That is my ruling; the vote shall continue.

Mr. Shymko: Vote on what?

Mr. Williams: You cannot, Mr. Chairman, with greatest of respect, impose and force members to vote on a matter that was not clear to them in the first instance. If the motion that was before them, which they were voting on, was understood to be a motion different from the one that the vote was being called on, you cannot insist that they attach their particular position on that motion to another motion. You just cannot do that, Mr. Chairman.

Mr. Chairman: Mr. Williams, firstly, I have made my ruling, but in clarification of that, does that mean if a person comes along two months later and says: "I misunderstood what I was voting on. Please reopen the proceedings"--that is carrying things to a bit of a ridiculous extreme.

Mr. Williams: The question was raised by one of the members as to which motion he was voting on before the vote was concluded.

Mr. Chairman: That was that member. That was not necessarily any other member who had already voted.

Mr. Williams: Because of that, it made one or two other members realize that they themselves were voting on a motion different from the one they thought they were voting on.

Mr. Swart: Mr. Chairman, you were right in your ruling. If I can speak to this point of order, and I believe this is--

Mr. Gordon: I was going to speak to that point of order.

Mr. Swart: Okay. Go ahead. You did have your hand up first.



Mr. Gordon: What I would like to say to you, Mr. Chairman, is that you have ruled now on a number of matters. As a member of this committee, I would favour, if there is some dispute and perhaps there is some clarification required, we should give you the same benefit that you give the Speaker of the House to check with his people on precedent and so forth. Carrying on in this procedural harangue or hassle is nonproductive.

Mr. Swart: Mr. Chairman, may I point out, on the point of order, that if a vote is being taken, anybody can ask questions beforehand. It was made perfectly clear the question was on whether questions should be now put. If there were those who were not paying attention voted the wrong way to what they had intended, that is too bad. But the facts are the questions were put in a proper order and we should proceed.

You know this is not the most important thing in the world, because after we vote on this, then we cannot perhaps put the other question anyhow because it is past the time. So we are still going to have to delay the vote on the main question until the next session. So if we vote this down now, we can still bring the question up in the next session anyhow.

1:10 p.m.

Mr. Williams: The important issue that has come up in a long time, Mr. Swart, is whether a member of a committee is forced to vote on a motion that he does not intend to vote on.

Mr. Swart: What do you mean, he does not intend to vote on it? He makes up his mind; he knows what he is voting for.

Mr. Williams: That is the impact of the suggested position of the chairman, but Mr. Gordon certainly has a valid point: If the chairman wishes time to reflect on the matter, we could stand adjourned until Wednesday. That certainly is not critical.

Mr. Chairman: May I read several things here? First, in Beauchesne, under section 223(3): "If a member who has heard the question put should inadvertently vote contrary to his intention, he may not be allowed to correct the mistake, but his vote must remain as first recorded." I guess I underline, "If a member who has heard the question put."

Then section 224: "A member may not be compelled to vote."

There is another section there; 225: "When his attention has been called to a breach of order in the course of a division, the Speaker has directed that the division should proceed and has dealt with the matter when the division was completed."

So, therefore, I suggest that this division be completed and then if you wish to challenge the chair, you may do so at the completion of the division.

Mr. Shymko: This is a very important precedent that you may be setting. My understanding is that as members of this

committee, we are to be very clear specifically on what motion we are voting.

I have been misled by the chair as to whether we were voting on a motion of Mr. Cunningham, which was before us, or whether we were voting on a motion to vote, which was presented, apparently, by Mr. MacQuarrie.

We cannot allow the members of this committee to vote on a question on which we have been misled and which is contrary. We are voting on something that I do not believe in because we have been misled, Mr. Chairman.

Mr. Chairman: Of course, I must dispute the fact that you were misled. I think it is pretty clear I said we will deal with Mr. MacQuarrie's motion; it is not debatable. He is making a motion to vote on the previous question, which means that we are going to have a vote as to whether the previous question be put. You will recall Mr. Cunningham using the expression "closure" or a synonym for closure.

However, I must state I do not believe I misled you. I do understand the confusion being carried on.

Mr. Swart: I object to saying that you misled anybody in this room. That just simply is not true. You did not mislead--

Mr. Shymko: I did not say that there was intentional--

Mr. Swart: Intentionally or unintentionally he did not mislead anybody.

If you read Beauchesne's Parliamentary Rules of Order, you will also find out that a person may request the motion to be read at any time if anybody is in any confusion. I do not see how they could have been, but anybody in confusion could have requested that. The onus is on the members; the onus is not on the chairman to determine whether everybody fully understands the motion that is before them. The onus is on the individuals here.

Mr. Shymko: Then if the onus is on the individuals, I request that the motion be read again.

Mr. Swart: You cannot when the vote is taken. You heard the chairman read that once a vote is started you shall continue. That's right, isn't it, Jim?

Mr. Gordon: That sounds pretty reasonable to me.

Mr. Chairman: Mr. Williams, do you wish to vote?

Mr. Swart--

Mr. Williams: Could I just have an assessment of where the vote is at the moment?

Mr. Chairman: At this point, there are six nays and one

aye, and Mr. Philip is the aye. Everyone else has voted except yourself. Either vote on it or not.

Mr. Williams: The majority vote at this time is that the question not now be put?

Mr. Chairman: Correct.

Mr. Williams: All right. I will vote nay to support my colleagues on that, so the debate on the motion will continue at the next meeting.

Motion negatived.

Mr. Chairman: Mr. Williams moves that we adjourn.

Mr. MacQuarrie: Out of courtesy to Jim Bradley, will you allow him to speak?

Mr. Chairman: Mr. Williams' motion is that we adjourn, to be reconvened Wednesday morning to continue this debate at 10 o'clock.

Mr. Piché: We have an order of business on private bills first. Following the private bills.

Mr. Chairman: At 10:30 a.m.

The committee adjourned at 1:16 p.m.



## Appendix

Following are the results of recorded votes in the clause-by-clause consideration of Bill 68, The Metropolitan Police Force Complaints Project Act, by the standing committee on administration of justice during sittings on the morning and afternoon of Thursday, October 8, 1981.

Mr. Elston's motion to delete Section 14(4), negatived by vote of six to five. (Page five, J-39.)

Mr. Elston's motion to amend Section 15(5), negatived by vote of six to four. (Page 22, J-39.)

Mr. Wrye's motion to amend Section 16(1), negatived by vote of six to four. (Page 24, J-39.)

Mr. Philip's motion to amend Section 18(4), negatived by vote of eight to two. (Page 31, J-39.)

Mr. Elston's motion to amend Section 19(12), negatived by vote of six to five. (Page 35, J-39.)

Mr. Elston's motion to amend Section 19(13), negatived by vote of six to five. (Page 36, J-39.)

Mr. Elston's motion to amend Section 19(18), negatived by vote of seven to three. (Page four, J-40.)

Mr. Philip's motion to amend Section 27, agreed to by vote of eight to three. (Page 17, J-40.)



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:  
ASTRA/RE-MOR: ARGOSY

WEDNESDAY, OCTOBER 21, 1981





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Piché, R. L. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Swart, M. L. (Welland-Thorold NDP)  
Wrye, W. M. (Windsor-Sandwich L)

Substitutions:

Bradley, J. J. (St. Catharines L) for Mr. Wrye  
Cooke, D. S. (Windsor-Riverside NDP) for Mr. Renwick  
Cunningham, E. G. (Wentworth North L) for Mr. Breithaupt

Clerk: Forsyth, S.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 21, 1981

The committee met at 10:12 a.m. in room No. 151.

After other business:

ANNUAL REPORT, MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:  
ASTRA/RE-MOR: ARGOSY  
(continued)

Mr. Chairman: We are back to our adjourned discussion of Mr. Cunningham's motion. We also had an agreement and a consensus last Thursday to get on with the estimates this morning, and the consensus was to get on with them at 10:30. Therefore, the chair is going to rule a certain time limit. I would entertain a little bit of discussion as to how much time Mr. Bradley wants first to speak to this and then for Mr. Cunningham to wrap up.

How much time would you think is reasonable, having regard to the committee's consensus and understanding that we are going to commence the estimates today?

Mr. Bradley: My remarks will be approximately seven minutes on this particular item.

Mr. Chairman: Thank you. Mr. Cunningham.

Mr. Cunningham: I see no reason to be any longer than that--maybe 10.

Mr. Chairman: Fine. Then let us have it understood that we have 17 minutes.

Mr. Williams: Twenty minutes.

Mr. Chairman: Twenty minutes, and then the question will be put. Is that agreed among the committee?

Interjection: Agreed.

Mr. Chairman: Fine. Thank you. Mr. Bradley.

Mr. Bradley: I was in the middle of my remarks to this motion to bring the receiver before the committee and why I think it would be advisable to do so. One of the concerns that has been expressed by the government members consistently throughout this whole matter, both in the previous parliament in the fall and subsequent to that, has been the fact that public revelations might adversely affect court proceedings and might adversely affect criminal investigations.

There are many who would feel that to have the facts and figures which could be revealed by the receiver made public at this particular time might still have that effect. That is why I

think Mr. Cunningham has seen fit to indicate that it would be done in camera for the purpose of this committee. On that basis, at least we would be aware of where certain funds had gone and how they had been disposed of and perhaps it would assist us in our deliberations later on as we get into the estimates of the Ministry of Consumer and Commercial Relations.

Eventually, the people whom we represent will have a right to know where certain funds went, whether they went to Switzerland or a Spanish condominium or wherever they happened to go, and to know, ultimately, what the role was of the Ministry of Consumer and Commercial Relations and the Ontario Securities Commission in this matter. Certainly the information which could be provided by the receivers would be a clear indication of just what happened. It may also cause further questions which would be related to just why ministry officials or the Ontario Securities Commission would have permitted certain things to have happened.

As we know, there was the article in a special publication known as Bimonthly Reports that dealt with a number of matters related to what the receiver would be dealing with and posed a number of questions about that matter.

Mr. MacQuarrie: May I ask Mr. Bradley a question? I understand from Mr. Cunningham's earlier remarks that there was a ban on publication of the receiver's report. I was wondering whether you knew why that ban was imposed.

Mr. Bradley: I am not aware of that. Perhaps Mr. Cunningham would answer that question right now.

Mr. Cunningham: Mr. MacQuarrie, it was my understanding that Mr. Justice William Maloney had imposed a ban on publication of that report and the distribution of the report, save to the law officers of the crown and to the solicitors for the Re-Mor and Astra people, who are using the report in the context of their court action. Basically, Mr. Justice Maloney's concern was, I think, that they did not want in any way through the publication of this to prejudice the criminal proceedings that are now are in the courts with regard to nine individuals and the civil cases.

Mr. MacQuarrie: Basically then, it was because it was sub judice.

Mr. Cunningham: Mr. Justice Maloney felt that possibly the publication of it might in some way impair the proceedings. It was with that in mind I suggested that this committee meet in camera.

Mr. MacQuarrie: I realize the in camera reason.

Mr. Bradley: In continuing, while we are very concerned about where the money went, particularly as it relates to why the Ontario Securities Commission or the Ministry of Consumer and Commercial Relations would have permitted certain things to happen, what we are really concerned about with this report--it might well be severable in this regard--was the government's role



in this whole matter and how the report would relate to the government's role. We have indicated on a number of occasions in the committee that we are not interested in pursuing the criminal end of things.

I am not as concerned about the civil cases which are before the courts, whether the Ontario government wins or loses its cases. It is certainly going to be decided by the courts, but I would be very concerned about criminal investigations, first of all, being adversely affected, and I would be very concerned about criminal proceedings. The civil actions are going to be going on for a long time, and I think you can use the excuse of interference with civil actions that the government is involved in forever almost in dealing with this. I am most concerned about the government's role and I think we could sever that from the others.

The safeguard is that if the committee agreed to have them come before us, and if they were prepared to release it to us, we would not be the only people who have seen that report. It is not as though just the receiver had seen it. My understanding is that there are others who have seen it, and as members of this committee, bound by our oath of secrecy, one would presume we would be interested in maintaining that confidentiality if we were to have them come before the committee.

The case is pretty strong for it. The government members have thwarted every other effort we have attempted in terms of this committee's dealing further with this matter. It reminds me of the fall, where we capitulated to almost all of your conditions and then, on calling your bluff, you said no again. In this case, we are capitulating to a major condition, that is, that the receivers would be called before us in camera. I have to accept at face value the contention by the government members that they are genuinely concerned about the confidentiality of this report as it relates to adversely affecting proceedings outside the committee. I am not prepared to get into a debate over that. I may have my own suspicions, but I will keep those suspicions in the back of my mind.

Mr. MacQuarrie: It is a judicial ban.

Mr. Bradley: Anyway, I would speak strongly in favour of that particular motion and I would encourage other members of the committee to agree to have the receivers come before us in camera and to ask whatever questions we might deem useful at that time.

Mr. Chairman: Thank you, Mr. Bradley. Mr. Cunningham.

Mr. Chairman: Thank you, Mr. Chairman. The members will be aware, or at least they should be aware, that the current minister is in no way responsible for the mess that has occurred in the past. They should be mindful as well that this current minister is engaged, however, in one of the most, I would say, significant altercations between the chairman of the Ontario Securities Commission and a Minister of Consumer and Commercial Relations in some time. Mr. Walker's views with regard to deregulation in many areas are certainly welcomed by myself, but not in the context of the Ontario Securities Commission.

I should digress and say that, notwithstanding the difficulties we have had with Astra and Re-Mor, our securities commission probably is one of the finest regulatory security agencies in the world. It has an enormous amount of respect throughout the financial community. As a modest investor in the market, I am mindful and well aware of the general respect that institution has. In recent times, because of the complexity of business practices and the increase in their activities, they have been in the situation where they have not been able to respond as quickly and as effectively as we have become accustomed. It is generally public knowledge that this minister wants, in my opinion, to undermine the activities of the securities commission, which, I think, especially after the Astra/Re-Mor fiasco, is the worst possible thing that could be done.

11:40 a.m.

I listened with interest to Conservative members' responses to my motion. My motion was categorized, I believe, as being premature. There was some suggestion that we may contravene the doctrine of sub judice which, of course, if we are meeting in camera, is absolute nonsense. One of the members suggested that it was not necessary, and I believe as well there were suggestions that legally we could not do it. None of these suggestions is factually correct. The committee could empower the receivers to attend a meeting here if we so desired. We could obtain, if we wanted, the receiver's report. We are not contravening any doctrine of sub judice because we would be meeting in camera.

I would like to respectfully suggest what some of the benefits from such a meeting could be. First of all, if we looked at that report, we would see the receiver's opinion, not a Liberal, a Conservative or an NDP opinion, but a nonpartisan opinion of a court-appointed trustee with regard to the myriad of difficulties which we are encountering with overlapping federal jurisdiction and the overlapping of jurisdictions within the ministry and the conflicts which exist between the OSC and the ministry. I believe Mr. Mitchell was the only one in the government party who was here for the Astra/Re-Mor committee hearings, but he certainly would have to be left with the impression that the relationship between the Ontario Securities Commission and the ministry is not all that great and possibly not conducive to the kind of examination that would be in the public interest.

The analysis by the committee of the receiver's report might assist us in making recommendations that may prevent future failures. Who among us in this committee would like to get up in the morning and pick up the Globe and Mail and find out that another trust company has failed, or that a combination of a trust company and a mortgage broker operation has failed, and failed for the same reasons that Astra or Re-Mor did or might have failed? We have an obligation as legislators to make sure that we propose the best legislation and that we examine in real detail the regulatory aspects and the administrative aspects of every ministry.

This ministry, sadly, is a mess. I do not think that if each member is truly objective about this particular situation he could deny that. As every member of the committee, more particularly the government members--

Mr. Piché: If I could just add a word here, I think it is unfair to say that this ministry is a mess. You are certainly not helping yourself by taking cracks at the ministry.

Mr. Cunningham: Mr. Piché, I did not mean it to be a crack. It is a reflection on the sad state of affairs that have existed. If you would like me to go through for your benefit again the litany of failures--

Mr. Piché: No, I do not want you to go through it, but--

Mr. Cunningham: --whether it is Argosy, Astra, Re-Mor, C and M, Co-Operative Health Services. How many more would you like in a year? How many more investors would you like to see lose money, or depositors or people who pay money for insurance? How many more would you like to see lose their money?

I think the members, more particularly the Conservative members, of this committee should examine in some detail their roles and their responsibilities here as members of the Legislature, not necessarily as members of a political party, but as members of the Legislature. It is simply not good enough to come here, whether from Kapuskasing, Sudbury or even Grimsby, to this Legislature--

Interjection: Beamsville.

Mr. Cunningham: --or Beamsville. You should be so lucky to live in Beamsville.

It is just simply not good enough to come here on a weekly basis and routinely vote as you are directed to vote and ignore--

Mr. Piché: Here we go again. That is an uncalled-for statement. You are speaking on the motion. Leave the politics out of it and keep exactly to what you know yourself.

Mr. Cunningham: Sadly, Mr. Piché, I have seen no other conclusion, judged on your conduct here so far.

Mr. Swart: The evidence points that way,

Mr. Cunningham: You have consistently done what you have been told to do.

Interjections.

Mr. Chairman: Mr. Cunningham has the floor.

Mr. Cunningham: Thank you, Mr. Chairman. I am going to conclude by asking the members again to reflect on the objectivity of this motion. There is no political mileage to be made in this. We are going to meet in camera if you so determine, and we can take a look at the receiver's report in camera with the honourable agreement that we have as honourable members of the assembly, not to disclose, not to divulge, not to publish, not to photocopy. In fact, I would suggest that we not even be given copies of it, but that we examine these things and take a look at them. I really do not know what the members could have against such an innocuous motion. Mr. Piché says lots, but I do not know why--



Mr. Piché: I resent that.

Mr. Williams: He didn't even say a word.

Mr. Cunningham: I clearly could see him, but I do not know whether he is saying New York Yankees or what.

Mr. Chairman: Mr. Cunningham, please keep going.

Mr. Cunningham: Mr. Chairman, I really think this is the test of the objectivity of the members opposite. This motion is not premature. It does not reflect adversely on the doctrine of sub judice. It in no way impairs Mr. Montemurro's rights or Miss Farmstone's rights or the rights of any of the other individuals who are charged on this. What it does is give the members of the committee an opportunity to examine in some detail the comments made by an objective individual, the court-appointed receiver in this particular matter, who was spent a lot of time.

I know Mr. MacQuarrie has seen the interim report by that particular gentleman, and I think that anybody who has seen that February 24, 1981 report would have to agree that this man has gone to some detail in outlining some of the difficulties--only some of the difficulties--that led up to what I think is one of the most major financial failures in Ontario history. I think the committee really would be irresponsible if it voted against this motion, especially if one month from now or two months from now we picked up the paper and read of the failure of another trust company or the failure of another financial institution, or we found out that somebody in the mortgage brokers' operation was sleeping again.

I leave it with you, but it is on your hands if one of these administrative failures leads to another failure of one of these companies. Ontario taxpayers--the little people who vote for Mr. Piché, and there are lots of them, and the little people who vote for Mr. Andrewes, and the little people who vote for Mr. Gordon from Sudbury--are the people affected by these things. We have legislation in place that is designed to protect people and that legislation is not working, or those ministries are not working, or the legislation and regulations are in conflict, or some difficulties continue to occur. It is those people who get hurt. I ask you to reflect on that as you cast your vote this morning.

Mr. Chairman: Thank you, Mr. Cunningham. I am sorry gentlemen, the understanding was made and it was reiterated this morning, so there can be no more persons speaking to the motion.

Everyone is in full knowledge of Mr. Cunningham's motion, but I will repeat it to make sure we know what we are voting on.

Mr. Cunningham moves that this committee meet in camera to examine the receiver's report on the failure of Re-Mor as soon as possible. We will have a recorded vote.

AYES

Bradley, Cooke, Cunningham, Elston, Swart.

NAYS

Andrewes, Gordon, MacQuarrie, Mitchell, Piché, Williams.

Ayes 5; nays 6.

Motion negatived.

Mr. Williams: Could I have a motion on the floor?

Mr. Chairman: Yes, would you please put the motion; then I will speak to the committee.

Mr. Williams moves that the estimates of the Ministry of Consumer and Commercial Relations, the Ministry of the Attorney General and the Ministry of Correctional Services proceed forthwith in the order as set forth on the Order Paper.

Before we commence, gentlemen, I am going back to last Thursday's understanding and agreement that we would get moving with the estimates of the Ministry of Consumer and Commercial Relations today. How many people wish to speak to this motion so we can allocate time right now?

11:50 a.m.

Mr. Swart: I would like to speak to your comment, if I may. There was undoubtedly a difference of opinion on this, but I am not sure there was any agreement. I think there were some questions put by you as a best estimate that we could give. I know in my case, and I think Hansard will show--

Mr. Chairman: There was not the word "agreement," but there was the word "consensus" repeated three times over, and Hansard will show it. You are correct on the word "agreement." But it was much stronger than a gathering of opinion. There was a definite consensus and understanding to which no one demurred; therefore, the chair is ruling that that is so and is going to continue.

Again, who wishes to speak to this motion? Mr. Mitchell, Mr. Bradley, Mr. Elston, Mr. Swart, Mr. Williams and Mr. Cunningham wish to, so there are six speakers.

Mr. Williams: I am the last speaker, as the mover of the motion.

Mr. Chairman: Of course, Mr. Williams, you will go first and have a wrap-up. Is it unfair to allocate five minutes each so that we can get the estimates started today?

Mr. Bradley: I cannot agree to that because some members may want to speak for one minute and some for 10 minutes, so I could not limit myself to that.

Mr. Chairman: Would it be fair then for me to cut off the debate in 35 minutes, seven times five minutes? What are we saying, gentlemen, that the consensus and understanding mean absolutely nothing in the committee? We have an agreement and now we find ourselves many hours later--

Mr. Swart: I thought you said you had no agreement.

Mr. Chairman: Consensus and understanding. Keep on correcting me if I use the word "agreement."

Mr. Andrewes: You indeed had consensus. The record shows you had consensus and you should be given the prerogative to rule on the time allocation on this motion.

Mr. Chairman: I would take Mr. Bradley's advice and then your advice next.

Mr. Bradley: Mr. Chairman, it is my intention to move an amendment to the motion of Mr. Williams anyway, and that is why I am just wondering how much time it might take. His motion includes more than I recall it did the first time we were talking about other ministries. I do have an amendment to this motion for that reason and I intend to present it if you will allow me to speak on that at the present time. I will give copies of the amendment to the Progressive Conservative members.

Mr. Gordon: How much is going to be regurgitation and how much is going to be new?

Mr. Bradley: This is brand new.

Mr. Williams: Can we proceed, Mr. Chairman?

Mr. Chairman: No, Mr. Williams. Mr. McQuarrie, you had a comment?

Mr. MacQuarrie: I just had a question, Mr. Chairman.

Mr. Bradley: Why can I not move my amendment?

Mr. Chairman: Because Mr. Williams has the floor and I interrupted him.

Mr. Williams: You have not heard me speak to the motion yet. How can you amend it?

Mr. MacQuarrie: I just had a question, Mr. Chairman, whether or not there was any truth to the rumour that Mr. Bradley was being appointed parliamentary assistant to the Minister of Consumer and Commercial Relations.

Mr. Chairman: Gentlemen, we are left with the idea that there is no such consensus or understanding and that it has no validity or weight. Is that what we are saying?

Mr. Bradley: Everything should be done by motion, Mr. Chairman. I suppose to clarify matters everything should be done



by specific motion, and perhaps when we get into the ministry estimates we would then be talking about ironclad motions that are made to specifically allocate time at that time.

Mr. Chairman: Gentlemen, I ask you to remember that in the future consensus and understandings mean nothing in this committee and things must proceed by ironclad motions, in Mr. Bradley's wording.

Mr. William: Mr. Chairman, the motion I have placed on the table for consideration is one that is clearly within the parameters and terms of reference of this committee for the current session of the Legislature. The Order Paper clearly indicates that we have a duty to discharge to the Legislature by dealing with the estimates of the three ministries that come under the justice policy field that have yet to be dealt with, namely, the Ministry of Consumer and Commercial Relations, which is to proceed first, then the Ministry of the Attorney General, followed by the Ministry of Correctional Services.

My motion clearly recognizes the duty and obligation of this committee that those three matters follow the directions given to us by the Legislature to address in our deliberations, and that any of the matters dealt with prior to this motion have really been matters that were introduced extraneously and are not really matters deemed to be in the normal order of business before the committee. This motion is simply to put the matter straight and formalize what this committee has been directed to do by the Legislature.

I think it is regrettable, in commenting on the few remarks that were made gratuitously before we spoke to this motion, that there is surfacing here today some evidence that members of the Legislature do not now want to be bound by any understandings or agreements arrived at in committee. This indeed causes me a considerable degree of concern.

I can recall only two or three days ago that members of the committee were determined to have the Minister of Consumer and Commercial Relations, when he was here, give a firm undertaking with regard to a matter which dealt with the matter before us at that time, the Re-Mor matter and the court proceedings. I think Mr. Swart extracted that commitment from the minister, not once or twice but three times, before he felt he had an ironbound promise committed in writing and on which they could rely, that no appeal would be taken to the decision of the courts.

By contrast to that situation, at the same time, at the behest of the minister in seeking direction on this matter, he inquired of you, Mr. Chairman, and the other members of the committee, if by consensus it was agreed that at the end of day one of the discussion on the special resolution and motion that was before us--introduced, I believe, by Mr. Bradley, or maybe it was Mr. Swart initially--that we would provide reasonable opportunity for all members to speak to those extraordinary motions, and there was a consensus, as I clearly understood it in sitting in all of the discussions, that matters would proceed on the Friday, but they felt they could wrap up the discussion by the Thursday.

Then, lo and behold, we came to the Thursday discussions, the second day of the regular sittings of this committee. Again there was further debate on the subject and again the question was put as to how much longer would be required to discuss these matters before we addressed ourselves to the main matters before us, namely, the estimates of the Ministry of Consumer and Commercial Relations.

Again, I clearly understood that a commitment was given by all parties through consensus that we would take one extra day, the Friday, to conclude these discussions on the motions so that the minister could be directed to be prepared to proceed the following Wednesday.

While Mr. Swart now seems to want to skate around the consensus that was arrived at by clearly stating there was no firm agreement--and it now is being reinforced by Mr. Bradley that we are not going to abide by any gentlemen's agreement or understanding that was arrived at by consensus, but it all has to be ironclad and in writing and on the record--this certainly is a new direction of attitude that is being developed within committees and is taking us away from long-standing conventions and traditions which have existed in this Legislature amongst members that once a consensus was arrived at in committee that consensus was honoured by all members.

Mr. Bradley: Do you recall the Solicitor General's estimates?

12 noon

Mr. Williams: I am shocked to hear, Mr. Chairman, that this attitude which is consistent with the honourable behaviour of members is now being somewhat diluted, especially coming from a man of Mr. Swart's stature. That he would feel some necessity to back off a consensus which was arrived at the other day does give me some real concerns. It is setting a very undesirable tone for the ongoing deliberations of this committee during this session if this is the type of atmosphere within which the members of this committee are going to be expected to operate. It is certainly setting a precedent which is unparalleled.

I would hope that those initial expressions would be reconsidered by Mr. Swart and by Mr. Bradley as to what their intentions and attitudes are in the future with regard to dealing with understandings and commitments, verbal or those which have been arrived at in committee. It might be fine for the opposition to have a minister commit himself in the way in which it was done with Mr. Walker, which I am not objecting to, that he give an ironclad undertaking. One can do it with members of the government party, but when there is a general understanding asked from the members in the opposition parties and they renege on those understandings, that is indeed a one-way street.

Mr. Bradley: Do you recall the Solicitor General's estimates, Mr. Williams? Come on! You have a very short memory.

Mr. Williams: Mr. Chairman, those opposition members who are taking this approach should look inwardly to themselves as to how it is going to really undermine the high level in which we have heretofore operated in committee. I really ask those members to think hard on that observation.

Mr. Chairman, the motion before us clearly sets out the purposes for which the committee was to operate during this session of the House and is doing nothing more and nothing less than formalizing those primary obligations of this committee. For that reason, I suggest we proceed now, following the debate on this motion, with the estimates of the Ministry of Consumer and Commercial Relations, followed thereafter by the estimates of the Ministry of the Attorney General, and following that with the estimates of the Ministry of Correctional Services, all of which are set out in that order on the Order Paper of the Legislature.

Mr. Bradley: Mr. Chairman, I would like to indicate, first of all, that in terms of time I will be speaking for the Liberal Party for the most part. Mr. Elston has indicated he would be very brief in his remarks.

I would indicate that I was certainly under the impression we were going to be finished private bills at 10:30 today. It is not the chairman's fault that it was not. There was a complicating factor which arose. There are people who are very concerned about specific items that were found within those bills. So, it was understandable that instead of finishing at 10:30 we finished at 11:30 and, therefore, that threw the committee's estimate of time allocation off by an hour. I would have participated myself, but it would have been finished by 10:30. Often these bills are routine, but we did find a complicating factor. That has been a mitigating circumstance this morning which has perhaps prevented the minister from coming before this committee.

Also, it is just a little bit hypocritical for the member for Oriole to start lecturing members of the opposition on the so-called breaking of a consensus agreement when we well recall the Ministry of the Solicitor General's estimates which were before this committee last spring and how, at that time, we thought we had a situation where we had agreement and yet we did not have agreement because we found out that the time allocation we had agreed to was simply not lived up to by members of the governing party.

I just say that, Mr. Chairman, because I think it is a little hypocritical for others to lecture members of the opposition on this. As I say, I really had no idea that private bills were going to go on. If you recall, our members had very little to do with the prolonging of the private bill situation. Those who honestly felt there were problems with the private bills spoke on that, and I understand that. I do not think there was any effort to prolong that particular aspect, but I mention that as being important.

Further down the line, once we get into the estimates, I intend to present a motion to the committee for consideration on



specific time allocation to be administered by the chairman to avoid what we are running into this morning. But I do intend to introduce and I wish to place on the record now an amendment to the motion to Mr. Williams.

Mr. Chairman: Mr. Bradley moves that the motion of Mr. Williams be amended by adding the following words: "and that immediately following the estimates of the Ministry of Consumer and Commercial Relations that pursuant to the petition tabled in the Legislature on Monday, April 27, 1981, requesting the referral to the standing committee on administration of justice of the annual report of the Ministry of Consumer and Commercial Relations for the year ending March 31, 1980, that the same annual report be brought before this committee for consideration so that this committee may undertake an inquiry into the role of the Ministry of Consumer and Commercial Relations in the collapse of Argosy Financial Group of Canada Limited and its related companies."

Mr. Bradley: I do this, Mr. Chairman, because I think that is probably the third chapter in the financial collapses we have seen and it is my view that this committee should be dealing with that as a relative priority. I recognize we are trying to get on to the Ministry of Consumer and Commercial Relations estimates and I appreciate that, and that is why I am not saying we should do it before that would happen. I am saying it should happen after that.

We have a situation where Argosy is another item that members are getting letters about. As a critic for Consumer and Commercial Relations, I have received a number of communications in this regard. Mr. Swart and his party--I recall Mr. Ziemba in the House discussing this matter in great detail. One very sad aspect of the Argosy fiasco is the amount of misunderstanding which has existed, not only in the media, but also in the general public about what actually happened.

It appears to be commonly thought that the investors lost their money because they bought into high-risk mortgages--we all recall that argument has been used before--which proved to be, for one reason or another, worthless as time went on. This misinformation was spread by this government, in my view, because it was important for it to have the Argosy investors as well as the Astra/Re-Mor investors look like greedy speculators searching for a fast buck. By creating this impression, the government could appear as champions of the interests of all Ontarians when it adamantly refused the demands of these investors for justice during the spring election campaign.

It is incredible how insidious this approach is. You spread the word that these people were speculators, like investors in penny-ante mining stock, and immediately all public sympathy for their plight, all public outrage at the inequity they have suffered, disappears. The Tory government took advantage of a public myth, that there are numerous classes of people out there waiting for a government handout, and then it manipulated public opinion to believe that the Argosy investors were one such avaricious mob.

It is really shameful that the government could be so manipulative and, in our view, dishonest. The Tory members of this committee should talk to the Argosy investors. I would like to see how many investors they could find who thought they were buying into a high-risk mortgage. On the contrary, the great majority of them thought they were buying good first mortgages on properties where the appraised value of the property was well above the value of the mortgage. Far from being speculators, the great majority of them were motivated by the desire to find a safe investment for their savings. There can be little doubt that many investors were assured by Argosy salesmen that they were getting into a safe mortgage. While carefully avoiding the words "first mortgage," the Argosy literature and advertising stressed the low-risk nature of the mortgages which Argosy supposedly was selling.

The legal documentation which investors received subsequent to purchase would certainly create in the average person's mind the impression that they had got what they thought they were getting, namely, part of a good mortgage in which the risk was minimal.

Mr. Williams: On a point of order, Mr. Chairman: Could you clarify for the committee whether the matters which Mr. Bradley is speaking to are a certain part of his amendment, or whether we should be properly be discussing the subject matter of the amendment at this time? I thought we were dealing with the main motion at this time, which is not related to the amendment.

Mr. Bradley: Let me deal with the amendment first.

Mr. Williams: The members are down to speak to the main motion.

Mr. Cunningham: No. You deal with the amendment first.

Mr. Williams: Following the opportunity for all the members to speak to the motion, you can put an amendment to the motion.

12:10 p.m.

Mr. Chairman: On the point of order, Mr. Williams, Mr. Bradley is moving an amendment to your motion, which is quite correct.

Mr. Williams: Yes.

Mr. Chairman: He is, presumably, explaining the background, the contents and the reason for his amendment. At some point, it runs beyond reasonable when one gets into the contents and one gets into the meat. It is really by way of explanation and background that you should restrict yourself to your amendment, Mr. Bradley.

Mr. Bradley: Mr. Chairman, speaking to the point of order, of course I am attempting to persuade members of the committee that we should agree to this amendment. I am doing it by providing some of this background information, which would then

allow members to make a judgement on whether we should proceed with this matter in committee. If I do not provide that extensive background information, then how would I ever assume that the members of the committee, particularly government members, would be able to make a decision on whether they would want to proceed with this after Consumer and Commercial Relations estimates or at some time in the future?

Mr. Williams: Are you saying then, Mr. Chairman, that the amendment is in order to be discussed at this time? That is all the clarification I need.

Mr. Chairman: Mr. Swart, I would like your guidance.

Mr. Swart: Mr. Chairman, I agree with your ruling that this amendment is in order.

Mr. Williams: I am not quarrelling with that.

Mr. Swart: I also support what has been said with regard to the explanation of the reasons why this matter should be considered. What we are doing, Mr. Chairman, in speaking to the point of order, is determining our priorities in this committee. After we deal with the estimates of the Ministry of Consumer and Commercial Relations, the amendment states that our priority should be to have an investigation into Argosy. Therefore, it is exceedingly important that we hear the arguments as to why there is a need for an investigation and why that should have high priority. I feel there has to be a full explanation of why we should be dealing with the issue.

Mr. Chairman: Thank you. I will rule the amendment is in order and Mr. Bradley is in order, although I suspect he will not continue to be in order until Christmas.

Mr. Bradley: That is true.

Mr. Swart: I agree with that ruling.

Mr. Chairman: Carry on, Mr. Bradley.

Mr. Bradley: Mr. Chairman, it was only after Argosy had collapsed that these investors discovered the mortgages in question were second, third and even fourth mortgages on properties where the total mortgage value grossly exceeded the appraised market value, a matter which we would want this committee to investigate on that basis alone. But I will continue because that is only part of the story.

Looking at the documentation which the Argosy investors received would lead one to believe the investors had bought no part of any mortgage whatever. The investors thought they were one of the mortgagees, that is to say, one of the persons who is loaning money to the mortgagor with the property as security for the loan. In fact, the only mortgagee which appears in those documents is a corporation called Argosy Investments Limited.



A second document purports to be what the Argosy literature called a so-called trust agreement. It is between Argosy Finance Company Limited, the investor, and Argosy Investments Limited. In one of its whereases, it says that Argosy Finance Company Limited and Argosy Investments Limited have agreed to execute the document at the request of the investor. In fact, in the cases we examined, the investor did not sign this document. There is no provision for such signature. The investor made no such request and was never asked to do so.

All of the Argosy investors we contacted never saw this so-called trust agreement until after they had paid their money and most of them, unfortunately, did not read it when they did get it. This so-called trust agreement, or, as it was called in some cases, "the acknowledgement and agreement," is so much legal garbage. While it pretends to set up Argosy Finance Company Limited as some kind of trustee for the investor's money with respect to the mortgage in question, the operative paragraph in the document declares that it is Argosy Investments Limited which is to have uncontrolled discretion in the enforcement of the mortgage.

What then did the Argosy investors buy? The sad answer is nothing whatsoever. They loaned Argosy Finance Company Limited money for which Argosy agreed to pay them a stated interest rate. The loans were totally unsecured without even an expiry date. Indeed, when some investors asked for their money back, they were told they would have to die first. When some said they needed their capital for other uses, they were told to take their so-called trust agreement to the bank and borrow money on it, which some of them did do.

If you are not one of those who got burned, you may say, as Mr. Davis and Mr. Drea intimated during the election, that a fool and his money are easily parted. I do not say that, and I hope members of the committee do not say that. I say that Argosy Investments Limited was licensed as a mortgage broker by the Ontario government. I say that Argosy Financial Group of Canada Limited was registered as a securities issuer by the Ontario Securities Commission. I say that London Loan Company Limited, an Argosy subsidiary, was licensed as a loan company by the Ministry of Consumer and Commercial Relations. When finance companies are so licensed and are required by law to be licensed in order to do business in Ontario, I say there is a justifiable expectation on the part of the public that they are being policed and supervised by the regulatory agencies which license them, and that there is a corresponding obligation on the part of the government of Ontario to see this elementary trust is not misplaced.

I think it is very important that this committee examine the role of the Ministry of Consumer and Commercial Relations in the whole Argosy empire collapse. It is an event of considerable magnitude, involving 1,600 investors and upwards of \$30 million. That is what we are talking about when we talk about dealing with this matter as a special item before this committee.

Let me highlight very briefly some areas that need to be examined by this committee, in my view.

As I mentioned earlier, Argosy Investments Limited was licensed as a mortgage broker with the Ontario Ministry of Consumer and Commercial Relations. On December 10, 1973, the chairman of the Commercial Registration Appeal Tribunal issued the following order: "That the continued registration of Argosy Investments shall be subject to the condition that John David Carnie shall forthwith surrender and give up share or shares of Argosy Investments Limited." This order was precipitated by Mr. Carnie's conviction in 1971 for conversion of funds.

On questioning in the House last spring, the then Minister of Consumer and Commercial Relations, the Honourable Frank Drea, indicated this condition was in effect for only one year, which is the explanation for Mr. Carnie's subsequent intimate involvement in the firm from the mid-1970s to its ultimate collapse in 1980.

I would like to know whether the need for this condition was addressed by the registrar of mortgage brokers when Argosy's licence came up for renewal for the year 1975, or whether this was another red-flagged company that was overlooked by the mortgage brokers' regulators. As we know, the registrar of mortgage brokers has the power to investigate and inspect the books of mortgage brokers. I would like to know, given that this firm had received some attention concerning its principals, why the Argosy mortgage brokerage operation was never inspected by the ministry. A lot of misery might have been avoided had this operation been closed down early.

As for Argosy Finance Company Limited, it appears that what it was actually selling to the public was an investment contract, a form of security which comes under the jurisdiction of the Ontario Securities Commission. It had no prospectus for this security although the law requires one. Argosy was advertising openly. The public record of the principal officer of Argosy was such that the Ontario Securities Commission would have had good reason to keep a close eye on Argosy operations.

Let me quote to the members of this committee for their edification, a letter from the Minister of Consumer and Commercial Relations, Frank Drea, to an Argosy investor. The meat of this committee's deliberations will be found in this:

"Thank you for your letter of June 1980 in which you express your concerns with respect to the investment in Argosy Financial Group. I share your concerns in this matter and can only say that the circumstances surrounding the demise of Argosy Financial Group were of a different nature than the matters which were the subject of Mr. Carnie's dealings with the registrar of mortgage brokers in 1973.

"I can assure you an active investigation was being conducted into the affairs of Argosy by the Ontario Securities Commission some time prior to the announced collapse of Argosy because of their concern about its financial health. This investigation is still continuing, and I am sure that when it is concluded, you will see, to use your own words, what positive action this ministry will be taking.

"Yours truly, Frank Drea."

How long had the Ontario Securities Commission been investigating before the collapse of the companies? Why did they not move in themselves to shut it down? Argosy accepted money up to the last day when the Royal Bank blew the whistle and placed them into receivership. And why has that investigation not been completed? There has been at least 18 months and maybe more--18 months and not a peep from the Ontario Securities Commission. Given their track record, of course, with Astra/Re-Mor, that is probably par for the course when it comes to OSC investigations.

In October 1979 the Ontario Securities Commission accepted a prospectus from Argosy Financial Group which allowed the company to sell \$3 million worth of unsecured debentures. So often we have heard the former minister, Mr. Drea, say that the investors were warned in that prospectus that these debentures were high-risk investments. Indeed, were they so warned? I really question that.

12:20 p.m.

But what Mr. Drea did not say was that the prospectus contained a gross misstatement of a material fact. It contained an Argosy financial statement which provided only \$360,000 as an allowance for doubtful loans and mortgages held by Argosy, when, as we know from the report of the receiver, loans and mortgages totalling almost \$30 million were in default at the time that prospectus was accepted. The net effect of this was that Argosy was broke, with little or no hope of recovery, at the time the Ontario Securities Commission was allowing it to borrow another \$3 million from the unsuspecting public.

The Ontario Securities Commission requires that financial statements submitted with a prospectus be audited only for the latest reporting period. In the case of the Argosy debentures issued in October 1979, this meant the period ending December 31, 1978. Because it did not require that the financial statement for the period following be similarly audited, the Ontario Securities Commission missed the fact that the majority of the Argosy loans and mortgages had gone into default.

The Tory government has maintained that the Argosy investors should have known what they were getting into. What should they have known? That the public watchdog, the Ontario Securities Commission, had accepted an Argosy prospectus which was grossly inaccurate and misleading; that the Ontario registrar of mortgage brokers, even though he is mandated to do so, does not conduct investigations of licensed mortgage brokers?

The Argosy collapse shows a number of lapses in the administration of our investor protection laws, as well as a number of shortcomings in the relevant legislation and regulations. As I pointed out earlier to members of the committee, this fiasco led to 1,600 investors losing approximately \$30 million. For these reasons, Mr. Chairman, I strongly urge this committee to conduct an inquiry into the role of the Ministry of Consumer and Commercial Relations in this affair, and therefore to support the amendment to the motion.



Mr. Swart: Mr. Chairman, perhaps you will forgive me, or rule me out of order if you wish, for just making a comment about the consensus which was reached.

I had no indication, at the time I said that I expected we would be going on to the estimates today, that there would be any further procedural motions before us. It was my understanding that the consensus was a consensus that it was likely that we would be dealing with the estimates today.

When I am accused of breaking a gentlemen's agreement, as I was by Mr. Williams, it does bother me, but I think that the record, Hansard, will show, Mr. Chairman, that what I said was that my best guess would be that we would be proceeding with the estimates today. I think perhaps, as you have rightly said, that you have declared a consensus--naturally, if you use the word "declare", you see a consensus--that we would be proceeding today. I do not think there is any breaking of a gentlemen's agreement on my part, and I think that Hansard will show that.

As I said previously, what we are doing now with this motion we have before us is really deciding priorities of the matters this committee is going to deal with--whether we feel perhaps even that the 25 hours which have been set aside temporarily for the estimates is the best way of spending this committee's time or whether a matter like Argosy, with questions I am going to mention in a minute, would be a better way of spending our time on behalf of the people of this province. Now that we have this motion before us, I want to say categorically that I think this is a better way on behalf of the people of this province to spend our time.

Mr. Chairman: Mr. Swart, you are speaking to the amendment?

Mr. Swart: Yes, I am.

Mr. Chairman: The amendment of Mr. Bradley states, "following the estimates of the Ministry of Consumer and Commercial Relations," thus and so will be done. So there is no question in front of us as to anything going on before the estimates or prior to the estimates of the Ministry of Consumer and Commercial Relations.

Mr. Swart: I did not say the estimates of Consumer and Commercial Relations, with all due respect, Mr. Chairman. I said the estimates, and my understanding is that the motion in fact deals with three estimates.

Mr. Chairman: Correct.

Mr. Swart: What we are doing is changing the priorities. We are going to deal with Consumer and Commercial Relations if this motion is passed, then we are going into the inquiry and then we will deal with the other estimates afterwards. I think I am correct in that interpretation and my remarks so far have not indicated anything other than that.

Mr. Chairman: May I clarify? You are speaking again to the amendment.

Mr. Swart: I am speaking in favour of the amendment, of course, which will give priority after we deal with Consumer and Commercial Relations to the issue of an inquiry into Argosy. If I did not make that clear at the beginning, I apologize. That certainly was my intention from the start.

This matter of Argosy has been an ongoing matter of concern for some 18 months. It was reported in the House by the Minister of Consumer and Commercial Relations in May 1980 that an investigation by the Ontario Securities Commission was going to take place. There was objection raised at that time that it was a committee of the House that should be investigating that.

No determination was really made at that time on it. In fact, no determination has been made prior to this time as to what type of investigation. It was an internal investigation being made by the OSC, and the Legislature and committees of the Legislature have not really determined on this issue whatsoever what should be done with it.

I raised this issue with the present Minister of Consumer and Commercial Relations in the House on July 3, the last day the House sat, and asked him why the OSC report on this issue, which was to have been tabled in the latter part of March or the first part of April, had not been tabled. He replied, and I quote from Hansard: "There is a continuing investigation of the matter by the police forces. As the honourable member knows, this is probably the most expensive and most extensive, be it monetary terms or geography, of any investigation ever conducted through government agencies."

"Of course, the Ontario Securities Commission has been directly involved in this. They had a very special budget set for them for this purpose. The matter is now in the hands of the police. The Solicitor General or the Attorney General will be considering any matter that might be related to the charges."

Then on a supplementary I should go on to say that he states: "I can assure the member and the member for Riverdale (Mr. Renwick) that the moment I have something that can be made public that information will be made public; there is no question of that. I hope the matter will be resolved very quickly--"

Mr. Gordon: Mr. Chairman, on a point of order, tell us what relevancy what my colleague across the way is saying has to the amendment in actual fact.

Mr. Chairman: He is referring to Argosy and reading correspondence with regard to Argosy. Are you not?

Mr. Swart: That is correct.

Mr. Chairman: Would you identify the correspondence again, Mr. Swart?

Mr. Swart: I am reading Hansard dated July 3.

Mr. Gordon: Would you read the amendment, Mr. Chairman?

Mr. Chairman: The amendment, moved by Mr. Bradley, is "that the motion of Mr. Williams be amended by adding the following words: 'and that immediately following the estimates of the Minister of Consumer and Commercial Relations that, pursuant to the petition tabled in the Legislature on Monday, April 27, 1981, requesting referral to the standing committee on administration of justice of the annual report of the Minister of Consumer and Commercial Relations for the year ending March 31, 1980, that the same annual report be brought before this committee for consideration so that this committee may undertake an inquiry into the role of the Ministry of Consumer and Commercial Relations in the collapse of Argosy Financial Group of Canada Limited and its related companies.'"

To take the meat out, the amendment to Mr. Williams' motion is that immediately following the estimates of CCR, the first set of estimates, this committee discuss Argosy.

Mr. Gordon: Okay. The motion of Mr. Williams, the main motion, says--

Mr. Chairman: That this committee carry on forthwith with the three sets of estimates.

Mr. Gordon: All right. I maintain, Mr. Chairman, after hearing that I would say that the main motion is complete in itself and that the amendment is not really an amendment. The amendment in actual fact is really another separate motion and should not even have been accepted as an amendment.

Mr. Swart: Mr. Chairman, on a point of order--

Mr. Gordon: No, that is not an amendment. That is a completely new subject having nothing to do with the main motion in actual fact, and you should not accept it. I would like a ruling on that because, as far as I am concerned, if we accept that, it is just subterfuge.

Mr. Chairman: I appreciate your comments and I realize the validity of the same. I have to rule against it for the following reasons, and I will keep my editorial comment out: Mr. Williams' motion does say that the three sets of estimates proceed forthwith in the order in which they appear on the Order Paper. An amendment which disagrees or wishes to change that latter part "in the order as set forth on the Order Paper" would constitute an amendment because this is differing with the order and the forthwith. This is relevant to the order in which these are heard.

I am sorry, as much as I would like to agree with you, Mr. Gordon, so that we might get on with the estimates, I have to rule you out of order.

Mr. Swart: Further, Mr. Chairman, I put a supplementary question at that time which stated: "Specifically may I ask the minister whether he recalls that there was a great deal surrounding the Argosy collapse and its blow to the 1,600 investors that indicated negligence on the part of the OSC. There is no question about that."



"In view of the fact that the report simply will be a result of the OSC investigating itself as well as the Argosy group, will the minister support a referral of the report to the standing committee on the administration of justice for a study by it, including the calling of witnesses and the production of documents, or is the minister just going to Re-Mor this one too." The minister replied: "The member knows the premise on which he bases his entire question is totally inaccurate; he knows it."

So here we have the issue put rather clearly. I stated that there was a good deal surrounding Argosy's collapse and the blow to the 1,600 investors that indicated negligence on the part of the OSC and the minister says, "The member knows the premise...is incorrect."

I think, in view of those statements being made in the House at a political level, that in itself should cause this committee to consider an inquiry into Argosy. There are three reasons why I feel that in addition to that, and related to that, we should proceed with this inquiry.

We know that the president of Argosy was a man named John David Carnie. We know that in 1971 he acquired a criminal record. We know that there was an order made in 1973 by the tribunal which dealt with the incorporation or the licensing of Argosy that Mr. John David Carnie was to give up the shares of Argosy Investment and no longer trade in them. The statement was made by the tribunal whereby Argosy was ordered not to hire or authorize John David Carnie, identified as director of Argosy Investments, to arrange or deal in mortgages.

Yet he continued from that time on to do exactly that and became the president of the Argosy companies. There was a question asked in the House back in the week of June 17 by Mr. David Peterson, and I want to read this into the record.

It was addressed to Mr. Frank Drea who was the minister at that time, and I quote: "Is the minister aware that on December 10, 1973, under the hand of J. C. Horowitz, chairman of the Commercial Registration Appeal Tribunal, the following order was issued: The continued registration of Argosy Investments shall be subject to the condition that John David Carnie shall forthwith surrender and give up share or shares of Argosy Investments Limited." To the best of my knowledge, that was not done and he was still the president and involved at the time of the bankruptcy.

Mr. Drea's reply was, "Mr. Speaker, there is no question that order was issued on December 10, 1973. There is no question that order was complied with. Has the honourable member read the order? I would suggest that he read the order because the order was only applicable until December 31, 1974. All those terms and conditions were complied with from 1973 and 1974."

Then Mr. Morton Shulman, who wrote several columns on this in the Toronto Sun, in the June 24 article makes this statement: "Why Drea said this is mysterious, for it is simply not true."

Nowhere in the order from the Commercial Registration Appeal Tribunal is there mention that the instructions involving Carnie were to apply only to December 31, 1974. In fact, that date does not appear anywhere in the order. I presume that Drea was misled when he read one of the exhibits at the hearing in which David Walker, the president of Argosy, signed an agreement that Argosy's registration would be renewed during a probationary period up until December 31, 1974. This agreement also included Walker's guarantee that Argosy shall not hire, option or authorize John David Carnie to deal in mortgages.

"The real intriguing aspect to this whole thing is that apparently Carnie continued in complete charge of Argosy despite the order, for on July 30, 1978, among papers Argosy filed with the Ontario Securities Commission, Carnie is described as chairman of the board since April 18, 1973"--I believe that is the date--"director, president and chief executive officer since May 10, 1978; general manager prior thereto for more than five years."

I think it is rather important that we bring Mr. Drea before a committee of inquiry and have him substantiate, if he can, his comments at that time that this was carried out. What happened? We have this total contradiction.

Secondly, I think we should be examining the web of negligence or worse carried on in the Ontario Securities Commission from the period 1972-1973 up to the time of the collapse early in 1980. For instance, I think we should know what caused the Ontario Securities Commission to overturn a decision by its director, Charles Salter, in 1978 in refusing to issue a receipt for the prospectus.

What is even more serious, which, it seems to me, Mr. Chairman, we ought to be investigating, is that when the tribunal investigated or had a hearing on this matter in 1978 they were not even aware of the report of the registrar in 1973 which stated that the licence for their corporation should not be renewed.

12:40 p.m.

There was no contact by the registrar even though this was an investigation by a tribunal to determine whether the decision of their director should be overturned and Argosy should be relicensed. They did not even check with the mortgage broker to find out why he had recommended that they not be given a licence in 1973. It is almost unbelievable that that would take place.

Let me just read again a report for you on that from the Toronto Sun of June 17, 1980. Dr. Morton Shulman states: "There have been startling new developments in the Argosy Finance Company scandal. On June 3 I described how this company went broke last March after borrowing millions of dollars from small investors and in turn loaning this money to construction companies in which Argosy's own principles had interests."

"I did not know when I wrote that article that as far back as 1973 an Ontario government agency had termed Argosy's mortgage

practices as 'unconscionable.' At that time, V. J. Simone, registrar of the mortgage brokers, had written to the president of Argosy Investments, controlled by Argosy Finance, describing their mortgages as, in effect, a cross between an umbrella mortgage and a blanket mortgage with an unconscionable twist.

"Mr. Simone complained that Argosy was purporting to, but did not actually, assume an obligation to retire existing first mortgages. Beyond that, the firm was issuing mortgages with a face value exceeding the amount of money actually loaned, charging interest rates often prohibitive, but never disclosed, to the borrower, and charging excessive or exorbitant brokerage fees, annual interest rates of 20 per cent to 26 per cent.

"Once again it states that Argosy was ordered not to hire or authorize John David Carnie, then identified as the director of Argosy Investments, to arrange or deal in mortgages. By the time of Argosy's collapse, Mr. Carnie was the company's president, but the real mystery is where was the Ontario government while the investors or Argosy were losing their money."

And then he asked this important question, "Where was the securities commission?

"As recently as yesterday the Ontario Securities Commission knew nothing about Argosy's 1973 mess. All of this went on in 1973 with regard to Argosy in the mortgage brokers office, which is under the Ministry of Consumer and Commercial Relations, and a tribunal was held five years later in which they reversed the decision of their own director and they knew nothing, got no evidence, took no evidence and knew nothing about this mess in 1973."

If Morty Shulman is wrong in these statements, which I doubt because they have never been corrected by anyone, then I think we should know that. If he is right in these statements, surely that shows a colossal negligence or worse in the ministry, that when you hold a hearing--it is almost unbelievable. The director of the Ontario Securities Commission turned down an application for renewal of Argosy. The tribunal holds a hearing on this matter, overturns the decision of the director and never attempts to secure or get any evidence from the mortgage broker when all of this went on as long ago as 1973.

Mr. Gordon, does that not seem almost unbelievable to you--and does it not seem to be something we should be looking into--how that sort of thing could have happened? Surely in all reason you must agree on that?

Mr. Gordon: Mr. Chairman, I would have to say to my honourable colleague on the other side, now that he has spoken with much enthusiasm on this matter, I think you have helped to make my mind up on this. So can we get on with it?

Mr. Swart: Yes, I shall get on. I am not going to take too much longer, Mr. Chairman. I certainly will be finished by one o'clock at least.



During all this period of time then we have the statement by Mr. Frank Miller, the Treasurer, in which he said in 1980, "It is my understanding that the firm was under monitorship right up until 1977." That is a statement by Mr. Miller, according to the Globe and Mail of June 19, 1980, that it "was under monitorship right up until 1977."

In 1973 this mess arose. In 1978 they have a tribunal which holds a hearing to see whether they should reverse the decision made by the director. The minister states monitoring was done during those years, and yet they get none of that monitoring and none of the information of the registrar of mortgage brokers. It is inconceivable.

I think we should have those records before this committee. We should have Simone and we should have Charles Salter here if they are still alive, and I am not sure whether they are. It was eight years ago and all of us are mortal. I think we should have them before this committee to find out how this could possibly have happened and whether there was any interference.

I know what Mr. Gordon and the rest are going to say if they speak on this motion. They are going to say, "There is an investigation going on now. Let us wait until that is concluded. Instead of us going into it, let us have that investigation." I point out to you that the result of that investigation was promised last March and we have not got it yet. Jim Renwick raised it in the House; I raised it in the House; the Liberal members have raised it, and we have no answer yet.

In any event, it is much more than just proving whether there was criminal action on the part of anyone. We should have them before us here to determine what actually happened in the operations of the OSC and Consumer and Commercial Relations that this sort of thing should happen.

I think the third reason we should have them before this committee is just simply that the Attorney General of this province has been involved in this with one of the people who were involved in this whole matter.

I have the newspaper report of February 18 in the Toronto Star, and I quote from that. It says: "Meanwhile, it was learned that the campaign manager of one of the key men in the Davis cabinet, Attorney General Roy McMurtry, is a former director of Argosy.

"McMurtry said he did not know of David Bruce Cowper's Argosy involvement until just recently. He defended Cowper as a very reputable individual and added that any allegations of conflict of interest would be 'a smear campaign to embarrass him and to embarrass me.' Cowper said he had been asked to join the board on July 3, 1979--"

Mr. Chairman: Mr. Swart, you must keep your remarks closer. In no way can I interpret what Mr. Cowper or Mr. McMurtry said as having any relevance to Mr. Williams' motion and the amendment thereof. You must keep yourself closer on the amendment, please.

Mr. Swart: Obviously, I want to abide and must abide by your ruling, but in defence may I point out the question we have before us is whether there should be an investigation of Argosy, and that includes, of course, the internal operations of the OSC.

Mr. Chairman: No, Mr. Swart, we are not discussing whether we will have a discussion of Argosy. We are deciding--

Mr. Swart: Whether there should be an inquiry.

Mr. Chairman: No, we are deciding whether we shall proceed forthwith with the three estimates in order, as set forth in the Order Paper, or whether we will take something in a different order, whether there will be some intervening thing. We are not discussing the merits of Argosy; it is only the item which would come between one or more of the estimates.

All we are discussing is the order of business of this committee, not the merits of what we will discuss.

12:50 p.m.

Mr. Swart: Mr. Chairman, may I point out to you that what we are discussing is whether this committee should make an inquiry into the role of the Ministry of Consumer and Commercial Relations in the collapse of Argosy after we discuss the estimates and before we go on. Do you agree that statement is correct?

Mr. Chairman: No, Mr. Swart, to decide whether or not we will discuss Argosy has nothing to do with it, and were the amendment that we would discuss Argosy or not discuss Argosy, I would have ruled it out of order because it has nothing to do with Mr. Williams' main motion.

All we are discussing here is whether we will carry on with Mr. Williams' motion with the items he sets out in that order, or otherwise. We are not discussing whether Argosy is to be discussed or Santa Claus is to be discussed, -it is only if there will be something other than the three estimates proceeded with in order. That is all we are discussing; that is all the amendment is allowed for that. Otherwise, it is out of order.

Mr. Swart: May I respectfully point out to you that the amendment to the motion which we have before us provides that after we discuss the estimates of the Ministry of Consumer and Commercial Relations we shall then discuss the annual report of the minister, to be brought before this committee for consideration, so the committee may undertake an inquiry into the role of the Ministry of Consumer and Commercial Relations in the collapse of Argosy.

It seems to me that the key to it is whether this committee is going to have an inquiry into Argosy after we deal with Consumer and Commercial Relations.

Mr. Chairman: But the essence of the amendment is to change procedures. Therefore, there really should be no discussion

on Argosy or conversations regarding Argosy or anything to do with that, only as to whether or not we proceed with the estimates in order, or as to whether or not we do not proceed with the estimates in order.

Mr. Swart: And interject Argosy in between. Therefore, I think it is incumbent on those of us who believe--

Mr. Chairman: Argosy or any other matter in between, Mr. Swart.

Mr. Swart: No, this only relates to the one matter, to Argosy in between.

Mr. Chairman: Yes, but, with respect, you should be restricting your remarks to whether anything is in between. It would be the same matter, whether you are discussing Argosy or the Christmas gift to your wife. The question is whether or not there is going to be something intervening.

Mr. Swart: That is correct, but to discuss whether something is going to intervene, whether it is the gift to my wife, I have to talk about the reasons why I should discuss the gift to my wife, some special occasion. In this case I must discuss the reasons why Argosy should be considered by this committee.

Mr. Chairman: No, the chair will not further let you discuss discussions between Mr. McMurtry and the other gentleman and so on. By that means you could completely subvert this amendment into discussing anything under the sun, or Mr. Bradley could have added anything under the sun and you could then have discussed anything under the sun. That is a complete distortion of an amendment that is proper in one sense or one phase of it to Mr. Williams' motion, and to completely distort that totally by adding other words, the chair will not let that continue in that line.

Again, Mr. Swart, you have the floor, but please restrict yourself to the motion.

Mr. Mitchell: I move that the question now be put, Mr. Chairman.

Mr. Chairman: You do not have the floor and, I am sorry, you cannot have the floor, Mr. Mitchell. You must restrict your comments, Mr. Swart, to Mr. Williams' motion and Mr. Bradley's amendment, which is relevant and directly relevant to Mr. Williams' motion.

Mr. Swart: Mr. Chairman, it is my view that the motion of Mr. Bradley that the Argosy matter should intervene and be discussed is extremely important. I am supporting that motion very strongly. One of the reasons I support it very strongly is that a close aide to Mr. McMurtry was involved in Argosy as a director--

Mr. MacQuarrie: Mr. Chairman, on a point of order: Mr. Swart is repeating himself in his comments here and he has been



going on ad infinitum in terms of covering the same topic. He is ploughing, harrowing, reharrowing and ploughing again. I would suggest, Mr. Chairman, that he be asked to conclude his remarks forthwith and allow other speakers to have the floor.

Mr. Bradley: Mr. Chairman.

Mr. Chairman: Are you speaking to the point of order?

Mr. Bradley: Yes. I am speaking very quickly to the point of order. I think we have to hear what Mr. Swart has to say before we can point out specifically where he is repeating. What is he repeating?

Mr. MacQuarrie: All the time.

Mr. Chairman: The chair has made the motion. Maybe I did not refer to it specifically, but under section 19(d)(2) of the standing orders, I am calling Mr. Swart to order and telling him that he must direct his speech to the question under discussion. I am ruling that he is directing his speech to a matter other than that under discussion. Therefore, I am bringing Mr. Swart back to the question under discussion.

Mr. Bradley: What Mr. MacQuarrie had said was that it was repetitive. I do not think it is repetitive.

Mr. Chairman: I will rule Mr. MacQuarrie out of order under a different subsection. His point of order was under 19(d)(3), and I am making my ruling under 2 that Mr. Swart must restrict himself to the question under discussion.

Mr. Mitchell: Mr. Chairman, might you just inform me as to the priority a motion takes? I had moved that the question be asked.

Mr. Chairman: No, you cannot get the floor to put that. Presumably, it is on a point of order, Mr. Mitchell.

Mr. Mitchell: That is right.

Mr. Chairman: You cannot obtain the floor by a point of order to make a motion. Mr. Swart, you have the floor.

Mr. Swart: I agree with you entirely on your latter ruling, Mr. Chairman.

Mr. Chairman: Only on the latter one, Mr. Swart?

Mr. Swart: You cannot interrupt anybody who has the floor to move that the question be put. That is parliamentary procedure. As I was saying, Mr. Chairman, I do not think I am repeating myself because I had just mentioned Mr. McMurtry's name once when I was called to order by the chairman or by some member of the committee.

It is of extreme importance that we do take time out after the estimates of the Ministry of Consumer and Commercial Relations to discuss this matter. As I say, one of the reasons is that Mr. Cowper, who was a director of Argosy, had some connections with a senior member of cabinet. Mr. Cowper stated, "I went on the board on July 3--

Mr. Williams: On a point of order, Mr. Chairman: With respect, I think Mr. Swart is disregarding the ruling that you have made in that he is continuing to deal with the merits of the Argosy case rather than with the merits of whether or not there should be an intervening matter to be discussed by this committee between the estimates of the Ministry of Consumer and Commercial Relations and the Ministry of the Attorney General, and he is clearly out of order.,

Mr. Chairman: Yes, I concur with that. Again, you are out of order, Mr. Swart. Please restrict yourself to the question of the amendment and the relevant part of the amendment as it relates to Mr. Williams' main motion, to the order of the proceedings, not the merits.

Mr. Swart: Mr. Chairman, I think it is important to have an investigation and to find out whether Mr. Cowper actually resigned on December 19, 1979, as he stated was his intention, or whether he did not resign until the collapse of this financial organization. For these three basic reasons--the obvious negligence between 1972 and 1978 by the OSC; the fact that the instructions of the OSC were not carried out with regard to the president, Mr. John David Carnie; and the fact that there was a person who had close connection with the Attorney General, who held directorship in Argosy, I suggest that it is important that there be a political investigation by this committee.

Mr. Bradley: Mr. Chairman, I hate to cut Mr. Swart off, but it as it is 1 p.m., this business is concluded for the day. That was Mr. Williams' suggestion, and I think members of the committee accepted that suggestion.

Mr. Swart: I had a few more sentences I wanted to make.

Interjections.

Mr. Chairman: Mr. Swart appeared to be in the middle of the final sentence. He had started out saying, "for the following three reasons," and he was in his third reason. Is that correct, Mr. Swart? You were winding up as to why it should be delayed.

Mr. Swart: Yes. I would have used a couple more sentences in summary, if my colleague, Mr. Bradley, had not have interrupted me.

Mr. Bradley: I am sorry.

Mr. Chairman: We will adjourn until tomorrow following routine proceedings.

The committee adjourned at 1:02 p.m.

Lacking nos. 45-67, 1981.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 178, HIGHWAY TRAFFIC AMENDMENT ACT

TUESDAY, DECEMBER 15, 1981

Afternoon Sitting



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Bradley, J. J. (St. Catharines L)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Piché, R. L. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Barlow, W. W. (Cambridge PC) for Mr. Mitchell  
Conway, S. G. (Renfrew North L) for Mr. Breithaupt  
Roy, A. J. (Ottawa East L) for Mr. Bradley

Also taking part:

Smith, S. L. (Hamilton West L)

Clerk: Forsyth, S.

From the Ministry of the Solicitor General:  
McMurtry, Hon. R. R., Solicitor General

Witnesses:

Borovoy, A., General Counsel, Canadian Civic Liberties Association  
Thomas, R. G., President, Criminal Lawyers' Association of Ontario



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, December 15, 1981

The committee met at 3:49 p.m. in committee room No. 1.

HIGHWAY TRAFFIC AMENDMENT ACT

Consideration of Bill 178, An Act to amend the Highway Traffic Act.

Mr. Chairman: Gentlemen, we have a quorum in place. We are commencing examination of Bill 178, An Act to amend the Highway Traffic Act.

The witnesses appearing in front of us are Alan Borovoy, the general counsel for the Canadian Civil Liberties Association and Ronald G. Thomas, president of the Criminal Lawyers' Association of Ontario. Two other persons are with us, not appearing as witnesses to give evidence or assist us orally, but as resource people, certainly to help us in a technical fashion. Dr. Vingilis and Dr. Khanna, each of whom are from the Addiction Research Foundation, are here to assist this afternoon.

Mr. Elston: Since we agree that these witnesses may appear, I wonder if it is necessary for us to put a formal motion in front of the committee to hear witnesses on this particular matter. I just want to make sure that the proper procedure is put in place.

I also wonder if we might have some assurance from the Solicitor General that we would be able to have some assistance from the people at the forensic science lab to deal with some of the areas that Dr. Vingilis and Dr. Khanna might not be able to deal with in respect to the effects of alcohol and other particular matters.

Hon. Mr. McMurtry: I was going to ask Mr. Lucas to make a presentation to the committee.

Mr. Elston: He is a member of--

Hon. Mr. McMurtry: Yes, he is the director of the forensic science laboratory.

Mr. Chairman: Mr. Elston, as you know, the rule of this committee, as set down by precedent, is that nothing gets discussed without a motion.

Mr. Elston: That is what I was wondering.

Mr. Chairman: If you wish to make a formal motion that we do hear them, it is probably in order if we are going to carry on much of a discussion.

Mr. Renwick: On a point of order, we have never had a formal motion on the ability of witnesses to appear before this committee. If there is a bill being heard in public and any member of the public wants to speak to it, they are free to do so. I would hate to see us start to have a formal motion on such a matter.

Mr. Chairman: Thank you, Mr. Renwick. We have then four witnesses, each requested I believe by Mr. Elston. To lead this off, I might ask Mr. Borovoy if he would be the first witness. I might mention that this was referred to us by the House on December 10 and this committee decided last Friday to proceed this week with consideration of the bill.

Mr. Elston: Before we start with Mr. Borovoy, perhaps I can make just one more point. I had considerable discussions with a doctor who lives out of the area. Perhaps the committee could keep in mind that he is not able to be here today and he might be able to get here tomorrow or Thursday, if deliberations go on that long. I wonder if we might keep it open. The committee might wish to call him in addition to the people we will be hearing from, then I might move that we do call that individual later on in the deliberations if I feel the information he has given me would be of some assistance.

Mr. Chairman: May I remind you that tomorrow morning at nine o'clock we commence the estimates of the Ministry of Correctional Services, so there will be nothing happening at least until after routine proceedings on Wednesday.

Mr. Elston: I understand we are also trying to finish those estimates tomorrow afternoon, if I am not mistaken.

Mr. Chairman: Yes, that is correct.

Mr. Elston: There is roughly an hour and a half to deal with those and we might be meeting after that time, I understand.

Mr. Chairman: Let's see how the bill proceeds and see what the time lag is when we come to the end of the other witnesses. Is that satisfactory, Mr. Elston?

Mr. Elston: Thank you.

Mr. Borovoy: I have with me our research director, Erika Abner. We very much appreciate the invitation to be here today. Unfortunately, we regret that there has not been the opportunity for the kind of research we usually like to do. We do not have a written brief. We have not even been able to consult the number of people that we usually do before we appear in these matters. However, we do appreciate the invitation.

I should say that partly because of a lack of opportunity to research this adequately, I will make certain assumptions which may very well not be valid. One assumption is that the machine we are talking about operates reliably and the other assumption is that the amount of alcohol it purports to measure in the bloodstream does render a person somewhat impaired. I have no way myself of verifying the authenticity of those statements. To whatever extent

I may appear to make some concessions to the authorities today, it is bounded by the assumption that those two statements are valid. If they prove to be invalid, everything I am about to say, save and except for the safeguards, should be disregarded--that is, assuming certain things will be regarded in any event.

First, two principles underlying the legislation: There have been some comments that this represents an attempt by the Ontario government to get around the criminal law. I noticed something of that in the press the other day.

In our view, I do not think that is a valid argument. I think that the Ontario government may exact a higher standard of sobriety for the right to drive a car than the federal government may exact for the right to stay out of jail. I think we are dealing with two different consequences. Stigmatizing conduct as criminal is one matter; rendering a person unfit to control the dangerous instrument we call a car is another matter.

As far as we are concerned, it does not necessarily represent an affront to civil liberties for the province to have a different standard for the right to drive a car than the Criminal Code may have for stigmatizing the behaviour as criminal.

Secondly, as a general principle, it is not inappropriate for the province, as a condition of the right to control the dangerous instrument we call an automobile, to require a person to undergo a reasonable, short and relatively nonintrusive inspection of his fitness to control that dangerous instrument.

Having said that, I submit there are also some problems with the proposed bill, and they lie principally in two areas: One, the method of selecting those who are going to be stopped and tested; secondly, the problem of the de facto punishment that is entailed in the exercise of stopping people in those situations where they may be far from convenient transportation and they may be required to pay towing and storage costs thereafter. Let me deal with each of these in turn.

First, the method of stopping people: We lay aside the one proposition, of course, that we all recognize, that it is appropriate for a police officer, or not inappropriate, to stop someone where there are reasonable grounds to suspect some impropriety on the part of the person. That is understood. The question is how far beyond that is it appropriate to stop people?

We have some concern, of course, that this could become an instrument for harassing some of the police's favourite constituencies or nonfavourite constituencies; or let me extend it even further, that it may be perceived by numbers of people in the public as an opportunity for harassment, and I think we ought to do everything our ingenuity gives us the power to do to avoid that happening.

4 p.m.

One suggestion we would make is that, beyond a power to stop people for reasonable suspicion, the bill might require that it not



be arbitrary, or that the selection system be random, or that it be on a lottery basis. For example, they might stop every sixth car or every twelfth car.

In other words, there should be some system--and I am not necessarily wedded to the precise dimensions of that system, since there has not been a long time to come up with a formula--that would ensure, when they are stopping people, blacks and whites, men and women, gays and straights, Fords and Cadillacs would have an equal opportunity to fall inside or outside of the net, that there be some kind of a fair system for stopping people.

Second, and in many ways much more important, there should be some right of redress for the person stopped in the event that the officer has been high-handed, arbitrary or unfair, and this is what we would recommend for you to mull over. In the event a police officer stops someone and divests him of keys, licence and car, that person should have the right after the fact to go to court. Just as we now give people the right to go to court on a speeding ticket or on a parking ticket, they should have a right to go to court to claim their out-of-pocket expenses back from the state in the event that the case against them is not proved as it ought to be proved, and in the event that the police officer's behaviour is unreasonable in the circumstances.

Let me just flesh that out a little bit. What would happen, if a person was divested of his car on the spot, is he would be given a form, which he would have to fill out and file as of a given date to make it operative. He could then go to court and a hearing would take place--it would be a challenge to the crown--to prove the case as though it were coming up for the first time. Was the reading accurate and fair? Could the officer read the thing properly? All the same things you could have in any other hearing you would have now, and that would go to whether it could reasonably be said that the person selected by the police officer for this sanction fell within the statutory net. There would be some hearing into that.

Second, there would be a hearing into whether the officer's behaviour was reasonable in the circumstances. For example, suppose he stopped somebody and there was someone else in the car who was quite capable of driving, and the officer said, "No, we are taking the car away," after the other person showed a licence. That clearly would be unreasonable behaviour. I just give that as an example. I am sure you could think of a thousand others yourself.

This would be a way of saying, to whatever extent the officer's behaviour was unreasonable in the circumstances and the person selected suffered an unfair consequence, out-of-pocket expenses, to that extent the court would be empowered to order that the government reimburse that person for those out-of-pocket expenses. We could be talking about expenses of \$40, \$50, \$60, \$70, and we are no longer talking about chickenfeed in the incomes of a lot of people. So this would be a way of dealing with that problem.

We suggest this really has two key functions: one, it would act as a deterrent, or could be perceived as a deterrent to unreasonable police action on the part of a number of citizens if

such a remedy were available; two, it would actually give a person a remedy. I think there is good reason to believe this is not likely to happen in a great number of cases. I take that in part from a statement I noticed attributed to the Solicitor General, whom I always like to quote, in which he said that, in the greatest number of cases, in the overwhelming number of cases, they would drive the person or the person could easily and conveniently get low-cost transportation and could put the car off to the side so the problem of impounding the car would not arise.

I take him at his word and I say, therefore, that we are not talking about not needing to have before us the parade of horrors image if we were to adopt a safeguard of this kind. It is fully consonant with our--if I may suggest this to you, it is a way of handling the problem that I believe meets the government's concern, which many of us would concede as a valid concern, that of removing marginally impaired people from situations where they can cause damage. It allows the police officer in the first instance to act, but it subjects that conduct to review thereafter.

The final point we would make to you is that it is a little difficult to appreciate why this matter is being inflicted on us in this rather rushed way, these instant deliberations about rather serious matters in an attempt, as best we can, to balance these competing values. Again, I do not know this, but if the government's concern is to have something in place by Christmas, one might ask why it could not have been introduced many months ago so there was an opportunity to consider it.

Let me just suggest this, to meet the government's concern and the concern the rest of us have, as a possible way to handle this, that what you might do is have an expiry date. If you were to pass something, let it expire automatically a few weeks hence, in the second or third week of January, so that you would be forced--in other words, on the assumption that whatever is enacted in haste is going to create some problems, this is something we cannot feel overly confident about. So let us provide that what you enact in haste--admittedly, if it is an urgent problem, to deal with an urgent problem--you let expire when the urgent problem expires and come back to the drawing boards. Perhaps by then our organization, among others, will have some even more ingenious safeguards to recommend.

Mr. Elston: I would like to hear the Solicitor General's reaction to the expiry date suggestion. I think it is a good one, and it would certainly deal with any perceived problem. I realize the RIDE, reduce impaired driving everywhere, program is still in operation and in effect, and perhaps you might let us know if you find Mr. Borovoy's suggestion as reasonable and as effective a solution to our current situation as I do.

Hon. Mr. McMurtry: My initial reaction is that it is not an unreasonable suggestion, and we are quite prepared to take that under advisement, as we say, and give it consideration. It is something I would like to reflect on at least overnight, but it is not an unreasonable suggestion.



4:10 p.m.

Mr. Borovoy: I cannot stop myself interjecting to say that is the most flattering thing you have ever said about anything I've said--that it's not unreasonable.

Hon. Mr. McMurtry: No, Alan, that is not--

Mr. Borovoy: I am going to walk away on a cloud. I have scored already.

Mr. Elston: Just don't go to the tavern and celebrate too long.

Hon. Mr. Murtry: I would just like to comment on something and ask for your reflection. This proposed program, as I think you probably know, is not unique to Ontario. There are similar programs in British Columbia, Alberta, Saskatchewan and Manitoba, all the western provinces. I have circulated a schedule with respect to when these were implemented: BC, 1966; Alberta, 1975; Saskatchewan, 1969; Manitoba, 1978. I might say their programs are based, as I am advised, entirely on police discretion, no requirement for an ALERT, alcohol level evaluation roadside tester, except in, I am reminded, Manitoba. Your civil liberties association being a nationwide association, I just wondered whether you are able to assist us, Mr. Borovoy, with respect to any information your association may have picked up about the programs in these other four provinces.

Mr. Borovoy: Regrettably, not at the moment. A preoccupation with other problems we have been involved in that I know you are aware of has precluded the kind of survey and research I would like to have done in these circumstances. But let me say this, if it is not pressing you too hard, were there to be an expiry date on this and a reconsideration of the bill thereafter, I would certainly be happy to canvass our constituencies in the other provinces and examine what their experience has been, and perhaps we could all be better prepared than we are right now.

Hon. Mr. McMurtry: I will be very frank with you. This has been debated internally for some time, as well as externally, and the word "haste" has been used. It may be we have been rather plodding and cautious, because we are concerned about the perception of any penalty being imposed, even if it is a 12-hour deprivation of your operating privileges on our highways without the right to have a trial in regard to that temporary suspension. That is an issue about which reasonable people can disagree.

The information I have received from the experience in the other provinces is that the concerns you understandably have expressed, according to the information I have, have not been a problem in these four western provinces. I just assumed that, given the importance of your association, you might have heard if there had been a problem. I do not quarrel with what you have said about doing further research, but I just wanted to know whether you have any information contrary to mine, which is that it has not been a problem in the area we have been discussing.



Mr. Borovoy: In fairness, at this moment I don't, but this is not the kind of thing we consult about with our groups in the other provinces as readily as we do areas of common jurisdiction. So it's the kind of thing where they could be having a serious problem, and we might not even know about it. When we do talk to each other, we are usually talking about the RCMP or something that is common to all of us. That is why I would not like to rely on the fact that I am not able this instant to report on that experience as an adequate barometer of what is going on in those other places.

Hon. Mr. McMurtry: Again, basing my remarks on what I have already said and which I will repeat, the suggestion for a test period is quite a reasonable suggestion. It is not unreasonable. I will even go one step further in saying it has some appeal for me at this instance.

I want to indicate, so far as an instrument for harassment is concerned, that those of us who have responsibilities for the functioning of police departments have to be concerned about even the perception that the police are harassing individuals, because if that perception is allowed to persist then the confidence of our law enforcement agencies will deteriorate quite dramatically.

When one looks at the present Highway Traffic Act, as I read it, it does permit a police officer to stop any of us at any time simply to verify or to check whether we have a valid operator's permit. Similarly, a police officer can stop anybody at any time, as I understand the Highway Traffic Act, to check the mechanical fitness of a vehicle. The point I am making, and I would like to have your comments, Mr. Borovoy, is that if an individual police officer wishes to harass anybody, he does have the authority under the Highway Traffic Act now, as I understand it.

Mr. Borovoy: You are probably aware that many people have complained about just that problem. That is not unknown in this jurisdiction. I am not sure I can cite cases from memory. Some of the complaints drawn to my attention over the years, and I am quite sure to yours as well, would have arisen in precisely that kind of context.

The Americans a few years ago, in deciding a Bill of Rights case, held that in the absence of probable cause there could not be arbitrary stopping, that they would have to have some kind of system of the sort I am suggesting here. I think all the courts said was that it could not be arbitrary in the sense that the officer could not stop whomever he wished to stop. There had to be some kind of a fair system, a random system. All I am saying about that is that whatever other powers may exist, apart from what is in this bill, are more of an argument against those powers exercised existing in that way than an argument against the proposal we are making here.

Mr. Breithaupt: At least the other brings in the element of fairness.

Mr. Borovoy: The random one. Yes.

Mr. Breithaupt: Or at least an acceptable threshold of fairness which does not discriminate.

Mr. Borovoy: That is right.

Mr. Elston: I had a question before we move on too much further. Is this little chart of various provincial things filed as an exhibit, or is it put out for information?

Hon. Mr. McMurtry: It was given to me and circulated to people as a matter of interest. It might be filed as an exhibit if the committee deems it appropriate.

Mr. Elston: I wanted to point out that so far the legislation in the other provinces reflects a return of the licences which may have been suspended at roadside if a reading of under 0.08 is arrived at through tests or whatever other conditions. That would certainly be different from our situation here. I think we ought to seriously consider that level in those other provinces. I point that out for the benefit of the committee members now.

Hon. Mr. McMurtry: I am advised that BC is in the process of switching to 0.05 and Saskatchewan to 0.06.

Interjection.

4:20 p.m.

Mr. Elston: I have one more suggestion. Under the proposed section 30(a) of the Highway Traffic Act--

Hon. Mr. McMurtry: I want to answer the question Mr. Elston has raised. Our advice is that if a person goes in excess of 0.50 the probability is that he is a risk to himself and others using the highway. It is not a criminal standard, as Mr. Borovoy pointed out. Our conscious decision was to make the level 0.50. What happens in other provinces is the licence can at least be temporarily removed without any ALERT machine at all, but if a person wants, he can go for a breathalyser reading. This has been their approach. This is why we wanted to share it with you.

Following up on what Mr. Borovoy said, I want to make it clear it is a conscious decision to impose that degree of regulation on our highways.

Mr. Elston: Perhaps to follow that up, I do have another question for Mr. Borovoy, but I will follow up along with what the Solicitor General has indicated. Can you share with us some of the statistics you may have as to the number of accidents caused or that involve people with readings under 0.08 that helped you to make the conscious decision? That is something we should know.

Hon. Mr. McMurtry: I will ask Mr. Lucas, who is--

Mr. Elston: Is this going to be another presentation?

Hon. Mr. McMurtry: --a principal adviser in this area,

who will give his views with respect to why we have selected this figure.

Mr. Elston: If he is going to make a full presentation, maybe we should finish with Mr. Borovoy.

Mr. Chairman: That is right.

Mr. Elston: I have one question of Mr. Borovoy in relation to the proposed section 30(a), which says, "The police officer may in each case request..." In my mind, that provides the police officer with a great deal of discretion in relation to on-the-site judgement. Have you any comment in relation to that sort of reading of the section?

Mr. Borovoy: Of course, it does give him a lot of discretion, but I suppose the discretion is limited to the extent that if the machine is as valid a measure as has been suggested, his discretion presumably is fettered by the reading on the machine. However, because even that is of concern, that is why we make the recommendation that if you want to divest individual from car at the scene and a more expeditious decision is to be made in those circumstances, then at least make it subject to some kind of fair review and remedy thereafter.

Mr. Elston: Will the Solicitor General make a comment on the review procedure after the fact?

Hon. Mr. McMurtry: No, I have no comment. Just as another point of information, I apologize to the committee that the sheet being distributed has some inaccuracies on it. I saw it just before we commenced. Manitoba's figure should be 0.05, not 0.08; Saskatchewan, 0.06; Alberta, 0.08; and BC, 0.08, with the information they are going to 0.05. I apologize for those errors.

Mr. Smith: Are they the roadside test results you are speaking of?

Hon. Mr. McMurtry: Yes. We have the legislation here in the various provinces if anybody wants to look at it.

Mr. Borovoy: I was about to say that one of my ambitions is to extract from the Solicitor General a concession that the other suggestion we make about the review afterwards is also not unreasonable.

Hon. Mr. McMurtry: As far as I am concerned. Mr. Borovoy, police officers must be accountable for their conduct. We might have different views as to how to maintain or establish a greater level of accountability. I am interested in your comments, and they do relate to the fundamental accountability of police officers and how they treat individual citizens. I certainly agree with the principle that they must be accountable.

Mr. Borovoy: What I was hoping you would appreciate is that the proposal attempts to accommodate the government's concern, that is, the power to remove some people marginally impaired, but



builds a safeguard into it that gives some kind of element of fair play to the citizen in the event of improper police conduct.

Mr. Renwick: Mr. Chairman, I have one matter I think we should be very clear about. We should not confuse the one example of the police demand to take a test under section 1 with the other major change in the bill, namely, apart altogether from impaired or anything else, the right willy-nilly or the power of the police officer to stop you on the highway. I do not presume to correct the Solicitor General, but it was always my understanding that the power formerly under section 14, that is, the right of the constable to request you to produce your driver's licence, was never an open-and-shut question that the police officer could stop you for that purpose. Indeed, as I read the Dedman case, that very question was left wide open by the court.

Mr. Justice Martin said in that case that since the respondent complied with the officer's signal to stop: "I am not required to decide whether in the circumstances the officer in giving a signal to stop was validly exercising an implied power under section 14 of the Highway Traffic Act, or was validly exercising a power ancillary to his general duties to protect persons and property and to detect crime, thus rendering the respondent, had he not stopped, liable to arrest for wilfully obstructing a police officer in the execution of his duties.

"Those are questions of some difficulty, requiring careful consideration, which should be reserved and decided on the facts of a particular case, if and when it becomes necessary to do so. It is, of course, within the competence of the Legislature and Parliament to place the matter beyond question."

It has been my understanding that clause 2 of the bill, the new section 198(a)(1), in fact does that. Regardless of what the general public may think, we should not misunderstand that that is a fundamental change that a police officer under any circumstances can request you to stop. There is no question of why he requested you to stop or anything. He simply can now request you to stop if we pass this. I am not making the point that I object to that clarification of the position. I tried to make that clear in the Legislature. But let us not forget that that clause alone, even if we did not have clause 1 about the impaired driving, is a very significant change. It has been an open question for a long time. It was for that reason I raised the very point that Mr. Borovoy has raised here because I had discussed the matter with Mr. Borovoy before raising the question in the House.

Most people, when they relate to a police officer stopping them and the RIDE program, are talking about a random stop, not an arbitrary stop. Most people think that the RIDE program is a random stop because everybody knows that if they have reason to believe that one's ability to drive is impaired they have that power anyway.

4:30 p.m.

I think we have to keep two things entirely separate. I think Mr. Borovoy is speaking about clause 1 with respect to the random right to stop for a test for impaired driving, which is a separate

and distinct question. I happen to think it should be random for that purpose. But I do not know how you then deal with the power which we are being asked to pass in clause 2 that the police officer is going to have the power to stop you in any event.

It does not matter how you rationalize it. You can say he just wants to stop you, as he has the power under a different section to inspect your vehicle. But there is the question of producing your licence, and perhaps the other unanswered question is his general authority to regulate traffic and the power to stop.

I think we are being asked two separate questions. Under clause 1 we are being asked if a police officer can stop anybody. Are we being asked by the Solicitor General to have a random sample provision for the exercise of the power to suspend? Or are we being asked if it is in the broad power of the police officer to stop for any reason--or without reason? Is that what we are being asked to give in clause 2 of the bill?

Is that not in itself an arbitrary power which leads to this further question which Mr. Borovoy raised, and which we were talking about in the House? That is the question of the potential capacity to harass a given selection of the community for one reason or another. Those are the distinctions I think need clarification in this committee hearing.

I would appreciate Mr. Borovoy responding to the general impression that the RIDE program was a random program and not an arbitrary one. Would he not say the random nature of the stop was related to this roadside test of impairment? I think that is a reasonable and proper way to deal with that matter. But I also accept the need to clarify that in this day and age a police officer should be able to stop you on the highway without having an argument about his power to do so.

Mr. Borovoy: But I believe you mean so long as he is stopping you in a nonarbitrary manner--that is because there are reasonable grounds to suspect something or because he is performing some kind of a test, audit or check and he is stopping people at random.

Mr. Renwick: Let us forget the impaired driving and the roadside test. If we only had before us clause 2 of the bill what we are saying in this case is that a police officer can stop you. He does not have to justify the stopping for any reason. That is what I take section 189(a) to mean in the way it is drafted.

Mr. Breithaupt: That means the reason is not because of a random sample.

Mr. Renwick: There is nothing random about it. It has nothing to do with impairment or anything.

Mr. Borovoy: It is not even for an inspection.

Mr. Breithaupt: It is not justified by its being random.

Mr. Renwick: It simply says: "A police officer may

require the driver of a motor vehicle to stop, and the driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop."

Mr. Borovoy: This is for any purpose at any time and in any way.

Mr. Renwick: Any purpose at any time. That is why I think the Dedman case was important because it went through all the ramifications of that. This clause is very carefully drafted to take advantage of what was learned in that case and to make certain they have it as clear as language can make it.

That answers a large number of unanswered questions under the Highway Traffic Act because there were specific sections which permitted a police officer to stop a vehicle for inspection. There was this open question, and it remained open because Mr. Justice Martin said it remained open, that although a police officer could ask you to produce the licence he had the ancillary power to stop you in order to ask you to produce the licence. Martin left that open and we are being asked to close it.

There is a lot of learning about the English statute and the wording of it in here. I took it when I read this clause 2(1) that the people who drafted this and the minister's advisers read the judgement very carefully and they said that the time had come to give a police officer a clear, unequivocal right to request you to stop and you had to stop. It didn't have anything to do with whether you were behaving properly or not behaving properly, the state of your vehicle, whether he wanted to ask you for your driver's licence or anything. He had the power. I understood that was what was the intention of the bill.

I can well understand that one might want to limit that power in the case of the roadside test. If he is going to give you a roadside test he has got to do it in accordance with a program, and the program that the case talked about was the RIDE program, which is described as police officers going to certain places and randomly checking certain vehicles. This doesn't talk about a program at all and the combination of clause 2 and clause 1 means that in the case of roadside tests that it can be an entirely arbitrary one.

It seems to me the only solution I can come to is that if we agree with clause 2, that is the right of the police officer, the power of the police officer to stop untrammelled anybody on the highway, then if we want to make a distinction with respect to requiring you to take the roadside test, and you want to say to the public that this can only be exercised if it is a random case, bearing in mind that if he has reasonable and probable grounds to believe they have already got the power to do it, has nothing to do with it.

If we want to qualify the roadside test to a random right of the police officer then I don't know of any other way of solving the problem that is raised by it. I have probably gone on at too great a length, but clause 2 of the bill, forgetting clause 1



entirely, is to give an untrammelled right to the police officer to require you to stop. It has nothing to do with your conduct, your behaviour or anything else. He can just put up his hand and you can no longer say, "He is waving to me because he knows me." He is telling me to stop and if I don't stop and I precipitate a police pursuit, I have the additional penalty imposed. In addition to that, it now becomes an arrestable offence without a warrant, and that is the third aspect of the bill.

It is how we relate those three or four matters which is of importance, and I am not suggesting that it is easy to do it. But I think we have got to understand that this right of a police officer to stop a vehicle and the driver's requirement to comply is at least a clarification of a large number of unanswered questions under the Highway Traffic Act. I would prefer to think that it is a new power given to the police officer.

4:40p.m.

Mr. Borovoy: I think it may be fair to say that is another example of the difficulty of attempting to deal with a problem like this in this instant fashion. Certainly with the time we had to look at it, it appeared that clause 2 was related to clause 1. I for one am grateful to you for drawing that to my attention at least, because it escaped me until now.

Mr. Roy: It escaped Jim Renwick apparently for a couple of weeks too.

Mr. Renwick: I raised it in the House. I spoke in the House. Read what I said.

Mr. Roy: Then I am concerned if you did.

Mr. Renwick: I devoted my remarks in the House to clause 2 of the bill before I dealt with clause 1 because clause 2 is a much more generalized power to the police having nothing to do with impaired driving.

Mr. Borovoy: I wonder if I could simply say that whatever argument the government may have for urgency with respect to the roadside tests could hardly apply to the rather broad power set out in clause 2. It is one thing if a power like that were related to the purposes of clause 1 and passed now, subject to the kinds of safeguards we are talking about; it is another thing to enact this rather broadly-based power without any kind of limit or anything like that. As far as I am concerned at the moment, I simply see no reason for urgency about that, whatever argument there may be for urgency about the rest of it.

Mr. Renwick: Mr. Chairman, I conducted my own random sample in the last couple of weeks since this bill came out. It is almost a lawyer's game. Practically everybody on the street, if you go up and ask them, "If you were driving your automobile and a police officer requested you to stop, do you think he has the power to require you to stop?" and they will say, "Of course." It is already assumed.

The fact of the matter is, it has never been clear, any more than a police officer can accost me on the street and ask me to stop. I can say, "Yes, officer, I will be glad to co-operate," but I can also say, "Yes, officer, I think I will continue on my way." Those are important but they tend to be legal questions. I am glad I have finally got it across because I was worried that I hadn't been able to express clearly, as one of the English judges said, this power willy-nilly to stop you, and that was it.

Hon. Mr. McMurtry: If I could just comment on what has been said, the crown's position in the court of appeal is that the Highway Traffic Act always had the implied power to stop. That was the position of the crown and Mr. Murray Segal who argued the case for the crown is with us today. In dealing with that Mr. Justice Martin stated in his judgement, page 23 of the copy I have: "I do not consider that the signal to stop given by a police officer to a motorist is any greater interference with the liberty of the citizen than tapping a person on the shoulder on the street in order to attract his attention for the purpose of questioning him."

Then you will recall, Mr. Renwick, Mr. Justice Martin reviewed the English authorities which indicated that under the English legislation the police officer clearly had this power to stop. We have looked to the English legislation in relation to our drafting of section 2. The Court of Appeal recognized that not only did the English legislation make that clear beyond question but so did the legislation in other Canadian provinces. In reading the legislation it was our view, and certainly Mr. Segal's view, that the Court of Appeal in effect suggested the Legislature put this issue beyond question. It had never actually been questioned before.

As a matter of fact, in his decision, Mr. Justice Maloney stated that there was no question in his own view of the law that the police did have this general authority. The problem he has was that he thought that to exercise the general authority for a specific purpose gave him some difficulty. In any event, there is no question but that the court of appeal did not rule that we did not have this authority. Reviewing other legislation in our view clearly invited the Legislature of the province of Ontario to put the issue beyond question and this is what we are attempting to do in section 2.

Mr. Williams: I wanted to get a point of clarification from Mr. Borovoy, but before doing so, I wanted to declare after Mr. Renwick had given us quite a dissertation on the legal point before us, I am not sure what his conclusion is, as to whether given the circumstances and the uncertainty of the situation, vis-a-vis the Dedman case, he is now recognizing and accepting the need for this particular section in the act.

While he has made this distinction, I am not sure what his conclusion is. I am not sure whether on that basis, having rationalized the distinction in his own mind, he is taking exception to the all-inclusive provision in 189a(1), or whether he is accepting it, given the reason for it as cited in the notation on the left side of the page; to clarify the law on the point as a result of the Dedman case. Mr. Renwick, I was not sure, having made the point, where you stand on the issue on this section 189a.

Mr. Renwick: My sense tells me that we are being asked to do two separate and distinct things in this bill. The way in which I reconcile the two things which we are being asked to do is that I think when a person is being asked, in my understanding of the evolution of this from the reduce impaired driving everywhere program, from the Christmas check to the RIDE program, to the problem in the Niagara Peninsula, to the case going to the court, was that if you asked any member of the public about being stopped to take a roadside test, and having your licence suspended for a few hours, most people think that is not an unreasonable condition to impose on people. That is based on the assumption that it is a random check; random in the sense that Mr. Borovoy has used it, that it is not arbitrary but it is random. If I am one of every sixth car, and every sixth car is being stopped, or whatever the process of random sampling is, that most people say, "Yes, that is a good thing. We will take our chances with that."

I think the first clause of the bill should therefore have the need for being part of a random test. Then we have this entirely separate and distinct question. With great deference to my colleagues at the table, particularly with the Attorney General, the English act appears to say that a police constable can stop a motor vehicle, whether or not it was against the driver's will, and left open the question of whether section 159 conferred a power as distinct from imposing a duty on the driver to stop.

They have read the case very carefully, and they have closed off the one element that is open even under the English act. They have now said that this question would be to stop the driver of a motor vehicle in a manner which placed the matter entirely at the discretion of the police officer irrespective of the circumstances. That is what we are being asked to do.

4:50 p.m.

Using the term advisedly, they have improved on the English act, so far as it is possible for the English language to make it, in clause 2 of the bill, to make it simply in the hands of the police officer. If we pass this, from now on it is at his discretion and that is it, and you must comply.

There is nothing random about it. It is not related to anything. He could simply stop you and say, "Thank you for stopping. Go ahead."

Mr. Williams: I understand your reasoning on the thing, but I was simply asking what conclusion does that leave you with?

Mr. Renwick: On clause 1, I think I have answered it. I think that for the purpose of requiring a person to make a roadside test for impairment, the point the public has reached, in any event, is that is fine if it is random. That is my view of it.

On the broader question of the police power to stop, my own conclusion was that yes, on balance, I would rather have it clearly and unequivocally understood by everybody that police officers, in their role of enforcing their general duties and the question of



traffic on the highway, have the right to stop you. I am happy with 2.

Mr. Breithaupt: That being the presumption of most people now anyway, as you see it.

Mr. Renwick: I happen to think that the great bulk of people, certainly the ones I talk to, believe that now to be the case. Mr. Roy is shaking his head.

Mr. Chairman: Please, the chair really fails to see. We are not here for one member to question another.

Mr. Williams: It was such an important point. I wanted to know the reason. I will come to Mr. Borovoy on the clarification under section 1(10) and section 1(11), removal of vehicle and costs of moving and storage. I want clarification of the point you have made there Mr. Borovoy, as to the objections you have raised about costs involved.

Mr. Borovoy: The problem is that in empowering a police officer to take you out of your car, you may be empowering him to have your car towed away and stored for a while. This could be a considerable expense to the citizen. I suggest that amounts to a de facto fine. The result is, as a result of the police officer's conduct, the citizen could be out of pocket \$40, \$50, \$60, or \$70 perhaps.

Usually when a police officer's decision can lead to that kind of removal of people from their money, if I may put it that way, the person is entitled to some kind of due process; some kind of a hearing before an impartial judge. I understand that you cannot do that before the fact the way we would most of the time. The whole purpose of this is to take impaired people, or marginally impaired people, out of their cars.

All I am suggesting is that you build some safeguard in for the person after the fact. Let him go to court if he wants to, at his discretion, and have a hearing into whether or not he really did fall into the category of people who should have been treated this way, and whether or not the police officer's behaviour was reasonable in the circumstances.

To whatever extent the answer is no, the court should be empowered to order the government to pay that person what he is out of pocket. In that way, you combine the power you are looking for to act in these urgent situations with the due process we have always insisted on in our society.

Mr. Williams: With respect, Mr. Borovoy, I do not agree with that being a reasonable conclusion to draw. I mean it is a consequence of the act, possibly. Given the circumstances, if a person has stopped and it is found that their licence will be pulled because of the fact that they find they consumed sufficient alcohol to meet the criteria, so to speak, in the bill, then that is a consequence of that person's act. Given the car may have been stopped at a certain location and the police officer, in his

discretion, decides that it must be moved for safety reasons, then that is a consequence of that person's act.

It is somewhat the same as when you go downtown--and I do not know where your office is--but if you are anywhere down in the central core of the city, if you leave your car for two minutes on the road, you will come out and find that it has been towed away under the bylaws down there. That involves perhaps \$60 by the time you pay impounding charges, towing charges and anything else.

That was a consequence of an act that the citizen committed. They thought they could perhaps avoid paying a dollar to park somewhere and they left it on Richmond Street, where it is a tow-away zone and you see those tow trucks every five minutes cruising the streets, picking up cars and towing them away. So how is that--

Mr. Borovoy: I think there is a problem in what you are saying because if the car is left there, then you are simply removing a car.

Mr. Williams: No but it was a consequence of an act of leaving it where it should not have been.

Mr. Borovoy: Yes, of course, but there is no question, as far as the facts are concerned. The car is there; the car may be removed. Here, this has to be distilled through the discretion of the officer. It is not simply "Was the car there?" It is: "Was the machine operating right? Did he blow what the officer says he blew, and was there a way of handling the situation that could have produced less problem for this fellow?"

Mr. Breithaupt: Especially when you do not know who the driver was, whether he was--it is a random thing--

Mr. Borovoy: That is right. You simply have the fact--if I can use the old legal maxim--forgive me for showing off, I still remember it--res ipsa loquitur, the thing speaks for itself. It is there. It is there and you can act on it. But here there are a whole set of facts that have to be distilled through the mind of the officer. All I am saying to you is that where most officers--perhaps the overwhelming number--would exercise that discretion thoroughly, responsibly and properly, being human beings, having prejudices, weaknesses and faults, they may make some mistakes too.

In those situations where that is possible, we want to give the citizen some relief against that possibility. In fact, that is why we have trials, because we do not rely entirely on the judgement of the officer. We want that judgement tested by people who are not involved in the functions he is involved in because we feel we will get a fairer judgement brought to bear on it. This is simply a way of trying to do that, incorporating this notion into the government scheme--trying to recognize what the government is trying to do and providing some relief as well.

Mr. Williams: In other given situations the charge may be laid and it may have been related to a circumstance under which the

citizen who was charged incurred some considerable cost because of action taken by the law enforcement officer. If they are found not guilty in a court hearing, under what circumstances in those situations have they returned money to that citizen who has been out of pocket as a consequence of having to go to court to prove himself innocent?

Mr. Borovoy: Not many. I think the big difference between that and this is that before any penalty is imposed upon the person in most situations, there is an automatic entitlement to a trial. This is the one situation where you can have a penalty imposed on the citizen without the benefit of the trial. That is why in recognition of the rather unique character of what we are dealing with here we proposed this kind of remedy. It is just because this is so different from all other situations.

Mr. Williams: But you concede it is still a consequence of the circumstance and of the situation involving the police officer and the citizen.

5 p.m.

Mr. Borovoy: Yes, of course, but the one problem you have is you have to deal with the situation where the situation is the result of the officer's fault and not the citizen's. This scheme, without the safeguard we propose, does not accommodate that possibility at all. We are suggesting a way of accommodating it.

Mr. Roy: Mr. Chairman, if I can just speak briefly, because I know there are other witnesses waiting here. I would urge the Attorney General or Solicitor General--

Hon. Mr. McMurtry: I thought we were hearing from witnesses?

Mr. Roy: Yes, but I just want to make one comment, if I may, Mr. Chairman.

Mr. Chairman: Yes, that is fine.

Mr. Roy: If I can make one comment to the Solicitor General. I would urge him to accept the proposal of Mr. Borovoy about the expiry date because I think, of all the statements I read pertaining to this legislation, none were as offensive as your statement, and I quote Hansard of last Thursday, December 10, where you stated:

"In conclusion, Mr. Speaker, I would urge all members to support and to ease the passage of the legislation before we adjourn. I believe this legislation will result in the saving of lives. I think, frankly, that any delay will simply lead us into a situation where the opportunity to save lives is lost."

Then, of course, there was a headline in the Globe and Mail that the members of the Liberal opposition were costing lives in Ontario. To think that you had the gall to say something like that after you introduced this important legislation as late as November 27, 1981, Mr. Solicitor General, I found extremely offensive and



beyond the dignity of that office. I think we could save a lot of problems if there was that expiry date on this legislation.

What we are asked here--and I think Mr. Borovoy has expressed this in some of the questioning by Mr. Renwick--it is not only that we want to achieve a goal of taking people who are under the influence of alcohol, marginally or otherwise, off the road. There is a wholesale power going to be given to the police under the Highway Traffic Act to stop people anywhere, any time, for any reason without any explanation whatsoever.

That does not necessarily even have to be coupled with the reduce impaired driving everywhere program. It seems that those two powers is something that is wide-sweeping and I suggest is certainly deserving of representation of people out there in the public.

The first question I want to ask Mr. Borovoy is: Am I to deduce from your comments to Mr. Renwick that you have serious reservations about this section 2, about the wide-sweeping powers given to the police to stop anybody, any time, any place?

Mr. Borovoy: To the extent that it creates an unfettered power, irrespective of purpose or method, the answer is, yes, I have some reservations. That does not mean I might not be persuadable with an opportunity to think about it. Certainly, my surface response--and you appreciate this came upon me rather new--is, yes, I have reservations. For that reason I would suggest that whatever you pass be linked to section 1 and/or have on it a time limit so that we can then consider the wider implications of such a power.

Mr. Roy: But you realize that this legislation is not necessarily linked to section 1.

Mr. Borovoy: Yes, I do.

Mr. Roy: In fact, a lot of people, many people are under the guise of thinking that the end we are trying to achieve is to limit the use of motor vehicles by people under the influence of alcohol, when part of this section has nothing at all to do with alcohol or anything else, the safety of vehicles or otherwise. Given that wide-sweeping power, it is your suggestion that, if we pass anything, at least that it be limited to the limitation under section 1 or at least that there be a time limit on it.

Mr. Borovoy: If you pass anything under this urgency, yes. That is not to say there might not be a basis for a broader power in the police to stop vehicles. It is simply to say that I am not sure whether it ought to be so unfettered as this clause would make it appear, and I for one would like an opportunity to reflect on what those limits ought to be.

Hon. Mr. McMurtry: I wonder if I might ask another question arising out of that. For example, in the Dedman case, Mr. Borovoy, Mr. Justice Martin states: "For example, section 101 of the Highway Traffic Act, 1975, Alberta, provides that every driver shall immediately, when signalled or requested to stop by a peace

officer in uniform, bring the vehicle to a stop and furnish such information respecting the driver or the vehicle as the peace officer requires."

I believe there is similar legislation in other provinces. I do not want to be repetitive, but I guess this legislation has been on the Alberta statute books since 1975. I gather there is no incident that has been brought to your association that would give you concern with respect to this legislation.

Mr. Borovoy: As I sit here now, examples do not pull out of my psyche. You will appreciate that in the haste to come here looking at this thing, I was responding to something rather different from these circumstances so, again, I would not like you to derive excessive consolation from what may be nothing more than a bad memory on my part.

Mr. Roy: If I may say to the Attorney General, I thought you said that the question of whether the police have the power to stop people is really up in the air except for specific purposes.

Hon. Mr. McMurtry: That is not what I said.

Mr. Roy: Let me finish, if I may. In fact, Mr. Justice Martin really did not answer the question or left it open as to what would have happened if the driver, for instance, says, "I don't have to answer the questions." The driver voluntarily complied in this case, but he does not go on to say what would have happened had the driver not voluntarily complied.

With this section 189a of the act you are trying to make sure that there is no equivocation, that it is clear to everyone that the police have the right to stop people any time, any place for whatever reason.

Hon. Mr. McMurtry: It had not been questioned before, Mr. Roy, and we are taking the advice of the Court of Appeal of putting that beyond any shadow of a doubt.

Mr. Conway: But is not the point about the Martin judgement just on that, because I am having great difficulty here? I took the Attorney General's suggestion. I went off and read--

Hon. Mr. McMurtry: Do we have to keep Mr. Borovoy here while we quibble amongst ourselves? I do not think it is fair to him.

Mr. Chairman: The rules of this committee are that, with Mr. Roy's consent, Mr. Conway can take a supplementary.

Mr. Conway: There is an extremely important point here for me. I just want to clarify it with Mr. Borovoy present and he may wish to comment on it. I went and I read the Martin judgement which was highly regarded last week and I thought I heard earlier the Attorney General say that it was his understanding that the general power to stop does exist and has been exercised by the police. That is your understanding. That was my understanding of what you said.

My understanding of the Martin judgement is that in the key area as to whether or not that absolute power exists, he did not, as Mr. Renwick quoted and as Mr. Roy has indicated, rule. He left the question open. He did direct the Attorney General to fill the gap. He directed parliament to legislate--

Hon. Mr. McMurtry: He said it was not an issue in this case.

Mr. Conway: That's right, but what I am concerned about, and I had the impression the other day when we dealt with this in the House, that the Martin judgement made it very clear on that subject and we were not going to be doing anything with this bill that the Martin judgement had not clearly said we ought to do. He said we can do it and we might do it, but he passed no qualitative judgement--

Hon. Mr. McMurtry: My recollection is that I said it is my clear reading of the judgement that the Court of Appeal invited us to put it beyond issue. They cited British legislation and Alberta legislation specifically. He said, in effect, that in his view, while this is really not an issue in this case, he invited us to put it beyond dispute. Because it is certainly clear in my reading of the judgement that was the direct message we were getting from the Court of Appeal.

Mr. Conway: Do you agree with the Attorney General who has said here today that it is his understanding--

Hon. Mr. McMurtry: He has heard what I have said. He has been here all the time.

Mr. Conway: That is correct and I appreciate that.

Hon. Mr. McMurtry: I don't think Mr. Borovoy needs you to--

5:10 p.m.

Mr. Conway: I am very sorry for having bruised the sensibilities of the Solicitor General who is very sensitive, I realize, having accused some of the rest of us of some rather heinous things.

I want to know, Mr. Borovoy, is it your understanding that the Attorney General is right in the assumption that the general power of a police stop has existed as a general power?

Mr. Borovoy: I think a lot of people have believed that.

Mr. Conway: What does Mr. Borovoy believe?

Mr. Borovoy: I am not as clear. I wonder if I could respond this way, if I may. It does not quite answer your question. Maybe it is even more important than the answer to it. I am not sure the Solicitor General should wrap himself so snugly, if I may, in the Court of Appeal invitation to put this matter beyond



dispute. I think we can all agree that the more you put any of these matters beyond dispute is a good thing.

It does not follow from that, however, that putting it beyond dispute means it ought to be a right or power unfettered by time, circumstance and purpose. I for one would like to reflect on what time, circumstance and purpose would justify that power and which would not. I simply say the invitation from the Court of Appeal need not result in so wide a clause.

Mr. Conway: Thank you very much.

Mr. Roy: I think it clearly answers my first question, Mr. Borovoy. The second question I have concern about is your suggestion about redress by the individual who would feel wronged under this process. I take it you understand that an individual in this process would only be out of pocket in most instances something less than \$100 and, given the cost of the process, the administration of justice, lawyers' fees and everything else, one must be practical when you are suggesting that sort of redress.

Is it your suggestion when you are making this alternative of a review that it be something that there would be a body or a process whereby the review does not fall absolutely or the cost of such a review, the burden of which, financial or otherwise, is not only on the individual who has been wronged?

Mr. Borovoy: I would really envision this operating something in the way traffic court now operates. If you have a speeding ticket or if you have numbers of other Highway Traffic Act infractions, you frequently have hearings that don't involve lawyers, although I don't want to be so unkind to my colleagues. There are lots of opportunity for people to go to court on wide numbers of things now and I simply say I would provide an opportunity, if they have this kind of--they can have a hearing for a speeding ticket and that could be less than this. I think they should be able to go for this. I am envisioning nothing more ritualized than that kind of hearing to establish this.

Mr. Roy: I was going to suggest that if it means--often it is a problem that we envisage when people have small claims, by the time they get to the lawyer and they pay for collecting or redressing whatever beef they may have, it is going to cost them far more. It is going to be really beyond their capacity. So I was looking at what type of review you had in mind. That might be one of the ways where a simple sort of complaint is made to the court and you are going to have a hearing before a justice of the peace or something.

Mr. Borovoy: That's right. It is along the traffic court model which means people can have lawyers if they wish, but most people would not.

Mr. Roy: My final question to you, Mr. Borovoy, is not something again--I understand you were all short of time and you have not had the full opportunity to give this a full review, but it strikes me that this legislation would be contrary to some of

the provisions of our Canadian Charter of Rights and Freedoms we are going to get shortly and something the Attorney General fought so hard for over the last few years.

Have you looked at that aspect of it at all, whether some of these provisions may run squarely against provisions of the charter? For instance, such provisions as, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." "Everyone has the right not to be arbitrarily detained or imprisoned."

I could go on and name all the important principles. This is pretty wide open stuff. Has anyone looked at that to see whether this legislation may or may not be offensive to this?

Mr. Borovoy: I momentarily reflected on it. I would not like to convey the impression that there was great study given to it, but, in fact, what occurred to me is to what extent would the power to stop people arbitrarily--unrelated to time, purpose, circumstances and unrelated to reasonable suspicion, unrelated to a random system or any kind of system like to that--to what extent could that amount to a power to encroach upon liberty without the principles of fundamental justice?

I believe it was on a clause similar to that, the due process clause--though I can't tell you this with certainty; these are exchanges I have had with my American colleagues over the years and I can't cite chapter and verse for you at this moment--but I believe it was an analogous provision that led a United States court to intrude upon a police power to stop people in this way in the US. That is one of the reasons why I have suggested a random system or something like that be incorporated into the legislation.

Mr. Chairman: Mr. Conway, you are next; do you consent to Mr. Renwick having a supplementary on that?

Mr. Renwick: I want to get away from the United States because of the constitution--the nature of the bill of rights and so on.

What we have to understand is that in England, as I read Martin's judgement, under section 159 of the English act the question is open whether or not the duty of the motorist to stop when requested by the police officer is accompanied by a power in the police officer to request you to stop just arbitrarily. What I was trying to say earlier is that the ministry people have read that judgement very carefully and they put in both provisions. They put in the power of the police officer to request and the duty of you to respond. In England, all they have got is the duty to respond.

That may be a lawyer's distinction, but it is an extremely fine one because it leaves open the broad question of whether just strictly arbitrarily a police officer in England can stop you. As I say that gets to be a very fine distinction, but the lawyers advising the minister have very carefully said, "We are going to close that gap here."

So I don't want anyone to misunderstand that we are just doing what we are doing in England and therefore it is all right in the latter days of the colonial empire here. They are doing more here. We are being asked, in section 2, to give the police officer the total power to stop.

I am glad we are having this discussion. I had come to my own conclusion that in this day and age in the highways in Ontario, and with number of people I have asked--I guess I have asked 50 people at random and I haven't talked about the bill or anything. I just asked them, if the police officer signals to you to stop when you are driving, do you think you have to stop? They all say automatically, "Yes." It is only when they get to a lawyer that the lawyer will begin to argue, "Did he have the power to make you stop?" and all the rest of it.

It seems to me we could make very good progress in the course of this bill if we could adopt perhaps at least one of Mr. Borovoy's suggestions. I certainly think that we wouldn't hurt anything in the province if we did not pass at this time clause 2; that we pass clause 1, because I happen to believe that, even though we can't prove it, if we save one person from injury or one person from being killed by adding this extra condition we should do it and do it now.

5:20 p.m.

I would suggest that in the next day or so we consider passing clause 1 with an expiry date on it and leaving it until the next session for the ministry to reintroduce the bill with the two powers and, in the light of this discussion, discuss the section and broader question as well. That would be one way we could proceed on the matter.

I simply do not want to leave at this point in time without us passing something, even if it is in an interim basis.

Mr. Chairman: Mr. Borovoy, do you wish to respond to that?

Mr. Renwick: Let me make just one further point, we have got to understand--I don't have the Court of Appeal judgement; there it is--we have got to understand that Dedman was talking about a program and it's very clear--I mean the question they were considering in the court was the RIDE program, which is a random program.

"The RIDE program involves police"--I am reading from the stated case that was put before the court, which is the foundation of the whole thing--"officers going to a location where they believe there has been a high incidence of impaired driving or alcohol-related accidents. Vehicles are requested to pull over on a random basis. Drivers are asked to produce valid drivers' licences. Police officers are also told to ask for proof of insurance" and so on. So it all begins to get confused, but there is the essential element in the case decided in the court that it was a random sample on the roadside test.



Now, I am happy with that. Others aren't, but I am happy with that and I am quite prepared to have that passed on an interim basis as suggested by Mr. Borovoy now, to leave the vexed questions of clause 2 which I am glad have now been appreciated and aired for further consideration--certainly perhaps by the criminal law association, by your organization--and then with the understanding that in the spring we would have an opportunity of looking at a revised bill which might very well take into account the kind of post-trial situation you had recommended, because it will help to keep the system honest because of the potential of going to the court, requiring the officer to prove that you had been properly stopped and required to take the test.

I am saying that only because of the shortness of time. If we had another two or three weeks to consider this matter, fine.

Mr. Chairman: Mr. Conway.

Mr. Conway: Thank you, Mr. Chairman, just a couple of brief points. I must say, Mr. Borovoy, I just wanted to say how much I appreciated your attendance here today.

On the point that Mr. Roy mentioned, I must say again, as a nonlawyer, I was rather impressed that the bill brought before us in the House for response really in the week of the great things from Ottawa that my charter of fundamental rights and freedoms was about to be given to me and ironically on a week when one of our major metropolitan dailies in this city was running front page stories about tow-truck fraud.

It really comes to rest with those of us who live outside of Toronto that this bill betrays too much the prejudice of a chauffeur-driven Toronto mentality, because one can imagine being in Tory Hill, 200 miles from this place--

Mr. Eakins: Which, by the way, for the first time in history voted Liberal. It should be noted.

Mr. Conway: --on a Saturday night, if one is stopped, that the fine concept that you were trying to explain to an earlier questioner would be very significant and quite frankly if in many of those cases you could get away with \$50 or \$60 or \$70, I dare say you would be quite lucky. I would imagine that before the night is over that you would be paying significantly more.

I was interested to hear you a couple of times refer to--and I think I quote you accurately--the somewhat impaired, the marginally impaired. I want to ask you, from the point of view of an interested and active party in these kinds of discussions, whether or not accepting, as you undoubtedly do and as I quite frankly think as we all do in this room and hopefully within the community, that impaired driving does constitute a very worrisome, serious threat to the peace, order and stability of the community.

I have had some difficulty with this distinction between the really impaired and the partially impaired, the somewhat impaired, the marginally impaired. I take it from what you said at the outset that that's not something that gives you a great deal of concern.

Let me put it another way. Given the nature of concern and the gravity of the problem, what I don't understand is if the 0.08 is allowing a whole bunch of drunks to be dangerously loose on the road, why don't we do something that is cautious and conservative and reduce the level to a limit which will catch all of those people? As far as I am concerned, they are all a hazard to me and I don't understand the distinction.

Mr. Borovoy: I don't think anything I said is inherently opposed to the notion of lowering the level for that which you want to make a criminal offence. That depends upon your understanding of how these things affect people behind the wheel. I leave that to those who understand these things much more than I do.

I am still trying to get adjusted to television, but what I have said is that no matter what the federal authorities may require for criminal purposes, that is no reason why a province cannot alter for driving purposes. On that basis, I can't quarrel from a civil liberty's point of view with the province's desire to condition the right to drive a car on a standard of sobriety greater than the federal authorities exact for criminal purposes.

Mr. Conway: All right, then the second point I wanted to touch upon with you concerns something that has been talked of at some length in this debate earlier in the session and I want to get your views on the subject. I happen to drive a lot and I was much surprised in the debate last week to find out that in the minds of many, apparently I surrender an awful lot, if not all, of my civil rights and liberties the moment I get into my car. I was thinking about that driving down this weekend and I must spend half my life in a state of suspension with respect to my rights and liberties.

Is it your view or to what degree do you accept the principle that one's civil liberties are suspended upon getting into or taking possession of or driving an automobile?

Mr. Borovoy: I always find it difficult to deal with questions like that in the abstract. I think the issue was always what interest in what situation is involved and I can't deal with it as an abstract issue of liberty versus order, but which liberty and which order in which situation is involved. If we are talking about cars, I think it is fair ball to say that the state may exact certain conditions from its citizens before it allows them on the highway in control of automobiles.

The state also exacts certain conditions before it will rent you a gun or other dangerous weapons. I have no quarrel with that so long as what they are imposing is reasonable and does not go beyond what's reasonable and to that extent there is no argument. The issue must always be whether the power they are talking about in the circumstances is reasonable, given a legitimate objective and I simply can't deal with the abstract question, "Are we losing too many liberties?" Tell me which ones and then I will respond.

On this particular bill of course I have responded. If there are others I would welcome them but I can only deal with these things in the concrete.

Mr. Conway: You have changed a bit since Bill 19.

Mr. Borovoy: No, as a matter of fact, I don't want to take up their time with that but I would submit it was the very same analysis there as here. It is only the facts that have changed.

Mr. Williams: He is saying you didn't give him the answer he wanted.

Mr. Chairman: Dr. Smith.

Mr. Smith: Thank you very much, Mr. Chairman. If we can deal with the two clauses separately for a moment, I would like to ask Mr. Borovoy one or two questions. I will try to be brief.

5:30 p.m.

With regard to the first clause, it seems to me the problem is not that the state does not have the right to exact a higher standard of sobriety--I do not think there is any problem there at all. The problem seems to be that there is a penalty involved here, even though the drafters of the legislation prefer not to call it a penalty. It is the penalty of re-acquiring one's car, getting home, possibly having the car towed, maybe losing a day's work to come back and get the car the next day, and so on. That is a penalty greater than many of the penalties prescribed under the Highway Traffic Act for speeding offences, just to take one example, or for crossing a solid white line.

Therefore, it seems to me what we are really trying to do here is create an offence without calling it an offence. In order not to call it an offence, we say the penalty is not really a penalty. The problem, I gather, is a constitutional one. Perhaps I can have your advice on this. I gather the problem is that, if we make it an offence to drive a car in Ontario with 0.05 alcohol, just as it is an offence to cross a solid white line, if we call it an offence, we may be thought to be infringing on the criminal area where the federal government has already set a certain standard for what they call impaired driving. Is that the problem as you understand it?

Mr. Renwick: Be careful on that. He consulted me about that.

Mr. Borovoy: Now I am duly intimidated. I should warn you that, if it is legal advice you are seeking, it will probably be worth what you are paying for it.

Mr. Smith: That would be the first time actually. It is usually worth less than what I pay for it. But carry on.

Mr. Borovoy: Now you are not talking about advice you have received from me, you are talking about others.

Mr. Smith: That's right.



Mr. Borovoy: In these circumstances, I would think there may be some constitutional problems along the lines you have indicated.

Mr. Smith: So what we seem to be doing is trying to get around the constitutional difficulty by creating a class of offence without calling it an offence and a class of penalty, which is suspension of the licence, the need to get your car back and so on, without calling it a penalty. I am not a lawyer and such fictions are, therefore, not commonplace with me. The closest I come to them--

Hon. Mr. McMurtry: If it is a fiction, it is a product of your own thinking. It certainly is not an issue that in any way influenced our approach to the legislation. But as long as you want to deal, as you do with other issues, with (inaudible) fictions, be our guest.

Mr. Smith: I really don't know what is eating the Solicitor General today. I think it is perfectly clear that there is a constitutional difficulty. The straightforward way for Ontario to behave in this is simply to create an offence under the Highway Traffic Act at 0.05. Just as it is an offence to cross a solid white line, it would be an offence to drive at 0.05. That would be the straightforward way. There would be penalties and due process, and there would be no problem. The reason Ontario is not acting in a straightforward way is because evidently it fears the constitutional implications.

If that is not true, then that is interesting. I would like to find out, after Mr. Borovoy leaves presumably, why the Attorney General is not simply creating an offence and saying it is an offence in Ontario to drive at 0.05 or greater. Even if it is a criminal offence at 0.08, it is a highway traffic offence at 0.05. The question is why the Solicitor General has not done that. Then the police would stop people for an offence and if they are found to have committed an offence, there is a punishment, there is due process, and they can go to court for it. It seems to me that is the issue with regard to the first clause.

Mr. Borovoy has given me his answer on that, but the Attorney General said that was not in the minds of those who drafted this bill. I have a lot of difficulty believing him there but, of course, he is an honourable man.

Mr. Roy: Dr. Smith, just while you are on that point, can I just ask the Attorney General if any of these other provincial statutes have been challenged in the courts on constitutional grounds?

Hon. Mr. McMurtry: No. Are you talking about the 24-hour suspension legislation?

Mr. Roy: Yes.

Hon. Mr. McMurtry: Not to my knowledge.

Mr. Roy: I thought one had. I thought Saskatchewan had been challenged at some point.

Mr. Smith: I ask for Mr. Borovoy's answer on this. I would have thought the reason we are not doing it in a straightforward way, by creating a highway traffic offence, is because of the constitutional concern. If that is not the case, then I will have a lot more to ask the Attorney General after Mr. Borovoy leaves.

Mr. Borovoy: It is not for me to answer for the government. I would not be either so presumptuous on the one hand or so whatever on the other hand.

Mr. Smith: Masochistic would be the other.

Mr. Borovoy: Perhaps. In any event, it is not for me to do that. Whatever the motives of the government may have been, I think it nevertheless behooves us to look at the merits of the matter to try to make a judgement as to whether, in the circumstances, it is fair or otherwise. My recommendation there would be that if the kind of proposals we have made were adopted, I do not think you would have the kind of civil liberties problem you would have without them.

Mr. Smith: I agree. It is a question of due process. It is a question of a policeman finding someone and, believing him to have committed some kind of offence, imposing a penalty without due process. That is the concern I have. This is the difficulty, because it is not called a penalty and it is not called an offence. I called that fictitious, but I did not mean that as an insult. I meant that I honestly believe the people helping the Attorney General were trying to get around a thorny constitutional issue and were doing their best to do so. I did not mean it in any insulting way at all.

Mr. Borovoy: I don't want to get involved in your partisan problems with each other. You understand I transcend things like that.

Mr. Smith: Naturally you do.

Mr. Borovoy: But conceivably, one might favour the approach the government has taken, quite apart from any constitutional difficulty, on the ground that it is a less intrusive way of handling some of these problems than perhaps some alternatives might be. That argument would still be open to it, apart from the constitutional difficulty.

Mr. Smith: In the second clause, the one that has to do with the right to stop a person who is in a vehicle, it seems to me the government has a legitimate concern here, because they wish the RIDE program to be in place for the holiday season. I understand that. It does seem to me at the moment, given the judgement that the Court of Appeal has made--I am not sure if it is going any further, to the Supreme Court of Canada--at the present level anyway, the matter seems to beg for some clarification.

I do not have any objection myself, frankly, and I wonder what your feeling is, to the notion that first, the police should be able to stop you on reasonable and probable grounds. That is reasonable. But second, they should be able to stop you as part of a safety program with random stoppage, as you have outlined, and as the RIDE program would do.

I wonder if you feel this second clause could be accepted now, provided it was in some way hedged by saying two things: First, the person should stop. I could not conceive of a situation where we would pass a law that says you do not have to stop if a policeman stops you, because under those circumstances it seems to me the policeman would have no choice but to give chase, thinking heaven knows what as to why you refused to stop. Under those circumstances, we would have chaos. I am not prepared to suggest we should have a law that says to a person, "You do not need to stop if a policeman stops you." I think you have to stop. The question is whether a person should have recourse afterwards, if the stoppage by the policeman has been on something other than reasonable and probable grounds to believe an offence was committed or was about to be committed.

Second, the policeman might have been acting through a random or regular stoppage program as part of an attempt to protect the safety of the public. As long as it was not capricious or malicious or arbitrary, then a person should stop. I would imagine it might be possible--and I hope the Solicitor General will think of that possibility--to hedge clause 2 in a way that says you must stop, but you have some recourse if the stoppage was not made on reasonable grounds or on the grounds of a safety program. Can you conceive of anything like that as being possible?

Mr. Borovoy: I could. Earlier I had suggested that perhaps clause 2, for the moment, since you are talking about something urgent, could be attached to clause 1 in the sense that it would arise only in the circumstances of clause 1, limited, as you say, to reasonable grounds or random check. Thereafter, if we are talking about something I hope would expire a few weeks from now--I do not know if that idea has caught hold yet--the Legislature might consider a wider clause to whatever extent a case can be made for it.

5:40 p.m.

Mr. Smith:: Thank you very much, Mr. Borovoy.

Mr. Chairman: Thank you. Are there any other questions to Mr. Borovoy? I would remind the committee that Mr. Thomas has been patiently waiting.

Hon. Mr. McMurtry: Just one other question, Mr. Borovoy. In regard to this process of having some recourse with respect to an allegation that a person's licence has been suspended unfairly for 12 hours, I assume you are familiar with the part of the legislation that states that an individual who is stopped and whose licence is requested does have the right to demand a breathalyser test. Do you not see that as at least going part way to meet your concerns?



Mr. Borovoy: No. Well, it goes part way, but I don't think it is adequate, because of the difficulty you continue to have. It is hard with a device like that to contemplate all the wide variety of circumstances that can befall people on the road. The problem I have with that is that, by itself, it does not deal with all the other things, with the problems of transportation, of improper readings, and so on. What happens if, for example, there is an impaired driving charge and you go to court? You can challenge the officer's ability to read the machine, and you can challenge whether the machine was set up properly.

There are also questions of whether the officer used reasonable judgement in having the car towed away or whether there would be some other way of disposing of it. So there are all kinds of situations that could arise that are just not accommodated by the right to have a second breathalyser. The answer is, in short, "Yes, it goes part of the way, but it does not go a sufficient amount of the distance."

Mr. Chairman: Fine, if there are no other questions. I would like to thank you for appearing before us on such short notice, give you the thanks of the committee, and ask Mr. Thomas if he would come forward. Mr. Thomas is the president of the Criminal Lawyers' Association of Ontario. Thank you very much for your patience.

Hon. Mr. McMurtry: I might say, just while we are waiting for Mr. Thomas to make himself comfortable, my advisers have just indicated there is a decision, Mr. Roy, in Regina versus Wolff (1979), 46 Canadian Criminal Cases (2d) 467, where I gather the--

Mr. Roy: Is that Saskatchewan?

Hon. Mr. McMurtry: No, the British Columbia Court of Appeal. I gather there was some issue with respect to constitutionality. Just briefly, the court said this: "In my opinion the legislation in this particular case is within the powers of a provincial Legislature. It is legislation enacted with regard to the use of a highway in the province of British Columbia and the safe use of the highway. The Legislature is trying to ensure the safety of users of the highway and has legislated within its jurisdiction."

Mr. Roy: If I may just make this comment, I have not read all the BC legislation, but I presume it is similar to what we are enacting here. BC legislation does not make it an offence as such, does it?

Hon. Mr. McMurtry: No, it has a roadside suspension of drivers' licences.

Mr. Roy: Okay, thank you.

Mr. Chairman: Mr. Thomas.

Mr. Thomas: Thank you, Mr. Chairman. First of all, I would like to deal with the matter that was raised by Mr. Renwick and explored by other members of the committee. That is the

question of the officer's right to stop. In the Dedman case, as has been said accurately, the Court of Appeal did not decide, because Justice Martin said that point was not in issue. He voluntarily stopped, therefore the court did not have to decide it.

The Court of Appeal did not invite the Legislature to clear the matter up. The Court of Appeal said it was within the power of the Legislature to do that. Those are two different matters. It is obvious it is within the power of the Legislature to say anything with respect to the operation of a motor vehicle so long as it is within the power of the province to enact legislation. But, in fairness, it may be that the Solicitor General's advisers have read it in a different light to the way I read it. But certainly the Court of Appeal has said it is within the power of the Legislature to clear it up.

The second point I wish to make, and the point that has to be kept in mind with respect to this, is that it is one thing to clear up a police officer's right to stop a vehicle, whether it is to check a driver's licence, to check the safety program or to follow up on something of this nature, but it is another thing to create an offence, the penalty for which is as great as any penalty in the Criminal Code dealing with driving.

The penalty for impaired driving or driving with more than 80 milligrams for a first offence under the Criminal Code is a fine of not more than \$2,000 and not less than \$50 or imprisonment for six months or both. Now the penalty under the proposed act before your committee today--and keep in mind that is just for failing to stop, for having had the nerve not to stop your vehicle--is to be found guilty of an offence and, on conviction, liable to a fine of not less than \$100, which is more than the Criminal Code, and not more than \$2,000, or to imprisonment or both.

If you accept the generally accepted notion, which is accepted in the courts and is accepted throughout the province, that the right to drive a motor vehicle is a privilege and not a right, and that the Legislature has to control the operation of those vehicles, which are a very powerful weapon in the hands of a wrong person, here what you are doing is enacting legislation that not only clarifies the right of a police officer to stop a motor vehicle at any time for no reason, as long as a citizen is requested to stop and that officer is readily identifiable, but that citizen is subject to a penalty higher than he would be for impaired driving under the Criminal Code.

The Solicitor General may say if we are going to give the police officer the power to stop, there has to be some penalty. Well, surely the penalty should not be greater than that under the Criminal Code for impaired driving for a criminal act, or certainly not the same. It seems to me that it is one thing to say, as in the Dedman case, the issue was, or could have been, if the man had not voluntarily stopped, was there a right under the provincial statute to stop the car, or was it part of the general exercise of police duties? If the person does not stop, the officer then could charge him under the Criminal Code with wilfully obstructing a police officer in the execution of his duty. Then the issues before the court are, was the citizen's failure to stop wilful? This imports

not only deliberate conduct, but it involves an element of mens rea, which is a guilty mind and a state of mental exercise accompanying the act.

Without getting too sophisticated on that point, this section says that every person who contravenes is guilty. What is the test? It is an absolute liability offence, save and except readily identifiable. It does not say if the citizen did not see the police officer. It is an objective standard. If the court finds that that man was there to be seen and he happened to be looking slightly this way and did not see him, he is still guilty.

This legislation, this section, is a lot more far-reaching than any that members of this committee have yet seen. In enacting this legislation, it is fine to say we don't want people killed on the highway. Who could be against keeping impaired drivers off the road? It would be absurd to suggest that we should allow people under the influence of alcohol to drive a motor vehicle. But don't, I respectfully urge you, think in terms of the one and the emotional and very practical problem of people ingesting alcohol and driving a motor vehicle with this power to stop any citizen at any time.

5:50 p.m.

Ask yourself, what is the defence to this? Are you going to have your constituents go to jail for 30 days or 60 days for not stopping their vehicles--they have not endangered a soul; they just hasn't stopped--because the officer was readily identifiable in some objective standard by a court at some point? Then take a look at subsection 3.

Hon. Mr. McMurtry: Sure, he is readily identifiable. You are just assuming the court is going to make a ridiculous interpretation of the matter. "Readily identifiable" would obviously have to be readily identifiable to the operator of the vehicle. For a court to interpret otherwise would be an argument of reductio ad absurdum. You are suggesting a court might convict somebody for failing to stop when his evidence was he did not see the signal to stop because the police officer was readily identifiable to somebody other than the operator of a motor vehicle.

Mr. Thomas: That happens all the time.

Hon. Mr. McMurtry: That's absurd.

Mr. Thomas: I do not see it as absurd. I am not going to suggest the courts of this province will reach an absurd result on any matter. I have more confidence in the courts of this province than that. But objective standards and subjective standards are rampant throughout criminal law.

I read this as an objective standard. It has nothing to do with the citizen. His defence might be, "I didn't see the officer." The section says, "readily identifiable." The citizen says: "I didn't see him because I was looking the other way. There was a car coming beside me. I didn't see him." And a court on all the evidence might very well find that he was there to be seen and say:



"You ought to have seen him. He was readily identifiable because of the surrounding circumstances, and you are guilty."

It seems to me that is a very far-reaching standard. It is not a subjective standard. It is an objective standard and the court would be obliged to look at it. They might take into account his defence--of course they would--and everything else he had to say to determine all the facts as to whether the officer was really identifiable.

The issue, in my submission, is an objective standard and you are subjecting that person to the risk of a jail term. I am not saying it is going to happen. They don't do that in impaired driving very often, but it is there. That is for failing to stop. In other words, it involves freedom of movement of citizen from point A to point B in his vehicle. If he doesn't see the police officer and he does not stop, he is subject to what amounts to the same thing as a criminal offence, except it is not under the Criminal Code, and the punishment is the same as it would be under impaired driving.

Then look under subsection 3: "When the court is satisfied on the evidence that the person continued to avoid police when the police officer gave pursuit, the court shall make a order suspending the driver's licence of that person for a period of three years." There has been a lot of discussion about police chases lately. I will not say that police officers don't have the right under certain circumstances to chase people who have committed criminal acts, but when you read this section, the court has no discretion. They must be suspended for three years, if the court is satisfied the person continued to avoid police when the police officer gave pursuit. That does not mean the police officer had reasonable grounds to continue to pursue. It doesn't mean the police officer was exercising rational judgement. It just means that the police officer pursued. The citizen may have all sorts of reasons. Somebody might have a gun at his head. There might be a pregnant woman in the car.

Hon. Mr. McMurtry: Just stop there for a moment. On the evidence that the person continued to avoid police, obviously if I am driving with somebody with a gun at my head or I have somebody very seriously ill, I think the court, assuming the reasonable common-sense approach, is not going to hold that the reason for the chase would be in those circumstances to avoid police. It would be because somebody has a gun at my head or I have a critically ill person in my car.

Mr. Thomas: I would have hoped that is what the legislation would have said, but that is not what it says. It doesn't say "wilfully continued to avoid the police." It does not say that. It says, "continued to avoid." If I continued to avoid--

Hon. Mr. McMurtry: You don't think the mental element, mens rea, would apply to this legislation?

Mr. Thomas: I don't. I suggest it should. Coupled with that, there is no discretion. There may be a case where a judge would say: "That citizen wilfully pursued; he kept going. The

police chased; the police had the power to do that. He ought to have reacted reasonably. That citizen is a menace and should be off the road." Hurrah! That is the kind of justice that should be exercised in this province. But to tie the hands of the court, to say that if a police officer is following an individual, and the individual continues to avoid him, that he is off the road for three years is pretty far-reaching legislation affecting the freedom of movement of the individual. It does not take into account the conduct of the person who is the pursuer, nor does it really take into account the reasonableness of the conduct of that person being pursued.

Those are the comments I have to make with respect to that legislation. I would recommend most strongly that that portion of this bill be given the most serious consideration.

Hon. Mr. McMurtry: We may not totally agree, Mr. Thomas, but if we were to add that the person wilfully continued, would that alleviate your concerns to a very large extent?

Mr. Thomas: It would at least leave the citizen with some right to explain his conduct.

Hon. Mr. McMurtry: There is always the common law defence of necessity. That hasn't been extinguished, has it?

—So far as subsection 3 is concerned, I gather that the inclusion of the word "wilful" would address your concerns about this.

Mr. Thomas: I would think certainly the word "wilful" should be in there and also the court "may" make an order.

Hon. Mr. McMurtry: No, it is a policy decision--

Mr. Thomas: I know it is a policy decision.

Hon. Mr. McMurtry: --to make it mandatory. It is just because there are too many smooth-talking people like you in the province.

Mr. Thomas: I would hate to have to go into a courtroom relying on that common law defence of necessity. It has certainly been used successfully, but it is like the defence of duress. It is there, but I would not want to have too much comfort in knowing that it is there. I would not take too much comfort in that. Certainly the word "wilfully" should be in there. The word should be "may" as opposed to "shall." I realize it is a policy decision. Let the courts decide whether this conduct reaches that flagrant point. That is what the courts are there for. With respect, the Legislature--

Hon. Mr. McMurtry: Adding the word "wilfully," I would think--

Mr. Thomas: Then the only thing we could hope is that the courts would give "wilfully" a little broader meaning than they

might to avoid that requirement that they take a man off the road for three years.

Mr. Chairman: Mr. Thomas, might I interject? We are running close to six o'clock. It is obvious we will be reconvening at eight o'clock.

We have people here from the Addiction Research Foundation who have been ultra-patient. Will we ask them to return tonight, if they can return? They are here to help us technically. What does the committee wish? First, Dr. Khanna and Dr. Vingilis. Can they return tonight?

Interjections.

Mr. Chairman: No, they cannot. That decides it. They will not be available to us.

Mr. Roy: Are they the only other witnesses?

Mr. Chairman: These people are here for the technical assistance of the committee.

Mr. Elston: Mr. Lucas is going to be giving us some information about the technical aspects. I guess they are the reasons behind the 0.05 and 0.08 situation. Although it would be of great assistance to have the two doctors here to help us out in any area from their vantage point, perhaps they could return tomorrow, if we are able to deal with this matter later in the afternoon, and go over some of the material Mr. Lucas will provide us with tonight. If we are completed, then that opportunity would not be available. There is an hour and a half for dealing with some matters after we come back from the tour and I would hope we could have another few minutes on them.

Interjection.

Mr. Elston: I just cannot help but think that if we are going to have the rationale presented to us for the use of one level and not another, then the people who have the expertise at hand are being excluded from assisting the committee in dealing with questions of policy judgements.

Mr. Chairman: Then is it all right if I have the clerk speak to them to see if they would be available after today?

Mr. Conway: I just do not want to get the impression that we are terminating the presentation and any potential cross-examination of the current witness. Is it your understanding that Mr. Thomas is now discharged?

Mr. Chairman: No, not at all. I am not speaking of Mr. Thomas but of Drs. Vingilis and Khanna only.

Mr. Conway: The second question is, can he come back at eight?



Mr. Chairman: I was going to get to that.

Mr. Thomas: The only thing is that my son is in a music concert tonight.

Mr. Chairman: Doctors, thank you very much for your attendance today.

Mr. Thomas: Mr. Chairman, my son is in a music concert tonight. Could you please take Mr. Lucas first and then you could come back to me?. Is it going to be finished by 8:30 or so?

Mr. Chairman: At eight o'clock, Mr. Lucas will pinch hit and then we will have cross-examination until Mr. Thomas gets back. Thank you very much.

The committee recessed at 6:02 p.m.



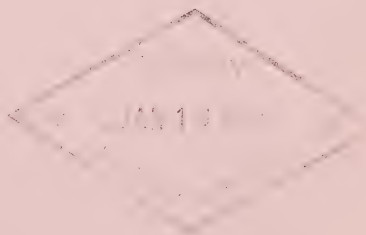
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 178, HIGHWAY TRAFFIC AMENDMENT ACT

TUESDAY, DECEMBER 15, 1981

Evening Sitting





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
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Renwick, J. A. (Riverdale NDP)  
Swart, M. (Welland-Thorold NDP)  
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

Also taking part:

Conway, S. G. (Renfrew North L)  
Gregory, Hon. M. E. C.; Minister without Portfolio (Mississauga East PC)  
McMurtry, Hon. R. R.; Attorney General and Solicitor General (Eglinton PC)  
Pollock, J. (Hastings-Peterborough PC)  
Roy, A. J. (Ottawa East L)

From the Ministry of the Solicitor General:

Hilton, J. D., Deputy Solicitor General  
Segal, M., Counsel, Crown Law Office Criminal

Witness:

Thomas, R. G., President, Criminal Lawyers' Association of Ontario

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, December 15, 1981

The committee met at 8:15 p.m. in committee room No. 1.

HIGHWAY TRAFFIC AMENDMENT ACT  
(continued)

Consideration of Bill 178, An Act to amend the Highway Traffic Act.

Mr. Chairman: Now that we are on the record, Mr. Renwick, you had a question as to the procedure.

Mr. Renwick: All I wanted to know is whether in light of the Solicitor General's remarks earlier this afternoon it is the intention of the committee to continue, or has the Solicitor General requested us to stand the bill down until he has had overnight to think about the very real suggestion made by counsel for the Canadian Civil Liberties Association?

Mr. Hilton: The only thing I can say to that, Mr. Renwick, is that prior to leaving we sat around for quite a while after the committee adjourned this afternoon. The minister reviewed that suggestion and has instructed me that that is not his position, that he wants to have a review of the bill by the committee after it has had six months or a period of time to operate, to see how it is operating, if anything is wrong, and he would be pleased to make any necessary amendments that appear reasonable or necessary at that time.

I might add that Manitoba did it exactly the same way. We have a published copy of the review that they did after they had this type of legislation in for a period of time.

Mr. Chairman: Mr. Thomas, perhaps you will carry on. Thank you for arranging your time to get back here with us, in fact well before virtually any other committee member arrived. How is that for a shot and, at the same time, a compliment?

Mr. Mitchell: As long as he substantiates that I was here.

Mr. Thomas: Thank you very much, Mr. Chairman. Just to summarize the position I have taken with respect to clause 2, it is my submission that clause 2 is a very far-reaching and arbitrary power and that the words of the section must be read carefully.

It is my respectful submission that you will find the officer is given the power to stop a motor vehicle and the requirement of the driver is to stop. What "stop" means, I do not know. Does it mean to stop right at the very point? Does it mean to stop down the road? Does it mean to stop and remain? Does it mean to stop and answer questions? Or what does it mean? It seems to say "stop." There is no definition of that, but I suppose that will be up to the courts.

Mr. Mitchell: May I just interject. Is that not covered in the Highway Traffic Act, where it says "come to a safe stop"?

Mr. Thomas: I do not know. There may be a provision in the Highway Traffic Act saying that. There are 200 or 300 sections. I am not familiar with all of them. I am looking at a section that says that the driver is required to stop, and the only test there is whether the officer is readily identifiable and is readily identifiable to the driver. It is an objective test; it is not a subjective test. It is a strict liability offence. It could even be regarded as absolute liability. It does not require any mens rea or any mental element on the part of the driver--

Mr. Mitchell: If I may again just interject, we are talking about section 189(a), "A police officer may require the driver of a motor vehicle to stop." That is the point of argument; is that correct?

Mr. Thomas: He may require him to stop.

Mr. Mitchell: But then the last line reads, "shall immediately come to a safe stop."

Mr. Thomas: That is right.

Mr. Mitchell: All I am saying is I think surely that is something that is at least--it has been a long time since I have taken a driver's examination, mind you, but a safe stop at one time was clearly identified as one where you could clear traffic properly and not cause any other--

8:20 p.m.

Mr. Thomas: If I might be permitted to finish the summary, I think maybe I can answer that. I do not mean to be rude--

Mr. Mitchell: No, that is fine. I am sorry for interrupting.

Mr. Thomas: --but might I just simply say this to you. The first requirement is that the police officer may require him to stop. The second standard on the driver is that he has to come to a safe stop. He might very well come to a stop but it will not be regarded as safe. That could be the offence. Yes, you could stop but maybe you did not do it safely.

Mr. Mitchell: I see. You are suggesting that it might be able to be turned.

Mr. Thomas: It could be a double standard. A person could stop but, as viewed by the officer, it was not safe. But the overall test is that he is "requested to stop by a police officer who is readily identifiable." The court's function is to examine all the evidence and to assess whether the officer was readily identifiable. It does not seem to matter what the driver saw or did not see. That would be a factor to be taken into consideration but it is an objective test. It is not a subjective test. If the



individual says, "I did not see him. I was distracted by another car coming by," presumably on that standard the court would be required to say that he was there to be seen, readily identifiable.

The penalty that is attached to that is the same offence for impaired driving or driving with 0.08. If you fail to stop safely, you could be sentenced to jail.

I have made the point with respect to paragraph 3 that the word "shall" should be changed to "may" and that the word "wilfully" should be contained in that subsection.

But I agree with what Mr. Renwick has had to say, in part at least, and some others, that this section should be severed from the other matter altogether and used very cautiously, because it is a pretty wide power to prevent the freedom of movement of the individual from point A to point B.

You will notice in here that there is nothing that the citizen is alleged to have done that would require him to stop. Yet the penalty is the same as if you had committed a breach of the Criminal Code driving with more than 80 milligrams, impaired driving, dangerous driving, and similar offences like that.

This is not an offence designed to direct its attention to the culpable conduct of a citizen; it is conduct where he has just failed to safely stop his car. When you look at the other sections of the Highway Traffic Act, it seems to me that this is a very broad infringement on the rights of the citizen. Even if you regard the right to operate a motor vehicle as a privilege, you are subjecting the citizens of this province to a very severe penalty for failing to safely stop the car with an objective test.

Mr. Hilton: May I comment before you pass on from that, Mr. Thomas?

Mr. Thomas: Yes.

Mr. Hilton: You will appreciate that this legislation was conceived to stop the behaviour of certain drivers, and I can think of one in Mr. Renwick's riding around Riverdale Collegiate who when ordered to stop--

Mr. Renwick: Yes, but he is not a constituent of mine.

Mr. Hilton: I am not sure whether he was or not, but the occurrence was in your riding. It happened in your riding. I do not know the man personally; so I did not ask him for his residence. But, in any event, he was ordered to stop. He did not stop. His driving around Riverdale Collegiate and around the public school and immediately south of the public school was indeed dangerous in the extreme to the children in the area and to all pedestrians and people in the area. He went through stop signs and all sorts of things. This is to bolster the high-speed chase observation that when a man is told to stop he stops.

If it can be said that anything in this legislation is taken away that will encourage people to run, then I do not feel, with

respect, that it is within reason to ask us to do so. The penalties are high for just that reason. Then there is the additional penalty of suspension where there is a particular emphasis on high-speed chase. But you first have to have the power to stop it, and you tell him to stop before he even starts running. If you do not have that power, then the rest does not follow.

Mr. Thomas: That is a very easy thing to do. I certainly am not as experienced as you or other members of this committee are in legislative draftsmanship, but certainly it is very easy to do. You simply amend the Highway Traffic Act to say that the police officer has the general power to stop a citizen to enforce the provisions of the Highway Traffic Act, or general duties et cetera, and you do it that way. But to give him the power to stop a citizen whose duty is to come to a safe stop and then a create a specific offence with a very serious penalty is a very broad section.

To say that a man drove dangerously and we need that added power, there is dangerous driving, there is careless driving--

Mr. Hilton: They do not necessarily require him to stop.

Mr. Thomas: A citizen sees that he has the power to stop him. A police officer has the power to stop anybody who he sees committing a summary conviction offence. There is no question of that. This is not needed for that, with respect, and certainly not in this form. What is wrong with amending the Highway Traffic Act?

Mr. Hilton: This is an amendment to the Highway Traffic Act.

Mr. Thomas: What is wrong with amending the Highway Traffic Act, if that is the issue, to clear up that question that may or may not have been raised by the Dedman case--it certainly has been raised before--as to whether, in each particular case, a citizen had a duty to stop?

The issue for the court, as it always is, is was the officer acting within his powers? Was he enforcing the provisions of the Highway Traffic Act or was it a capricious request on his part? Was he enforcing the provisions of the Criminal Code or was it an arbitrary conduct on his part? But here you are not just giving him the power to stop a vehicle; you are saying he can stop him without a test or reason. He can stop him. Not only that, but the person has to come to a safe stop. If he does not come to a safe stop, he can be guilty, even if he stops, if the officer decides he does not like the way he brakes.

Mr. Hilton: Surely the safe stop is on his side. He does not have to stand on his ear. He has the time and space to make a safe stop.

Mr. Thomas: Yes, but what if he does not do that?

Mr. Hilton: It is the same as a stop sign, stop street.

Mr. Mitchell: Stop light.

Mr. Hilton: Stop is stop.

Mr. Thomas: And for those things you might lose a point or two and be fined \$25 or \$50, or something like that. Here you have a police officer who requires someone to stop. There is no reason. This is not saying it is because he violated the provision of the Highway Traffic Act; it just says it may require him to stop. It does not say he may have done anything. I think this is what Mr. Renwick was worried about; you can ask him to stop for no reason.

You may say police officers will not do that. That is another argument. Why do they have to have the power to stop somebody when there is no suggestion of a breach of any statute? You just stop them and then you create an offence that has a serious penalty attached to it. I have not compared all of the sections of the Highway Traffic Act, but certainly there is a more serious penalty attached to this than 80 per cent of the sections. It is \$2,000. It is more than impaired driving. The minimum in impaired driving is \$50. It is \$100 here, and it is a minimum too. There is no power in the court to give a suspended sentence. The minimum is a \$100 fine, the maximum is \$2,000 or imprisonment of not more than six months or both. That is pretty serious stuff for failing to stop where there is no violation that is spelled out.

I do not want to repeat myself, but it is a far different thing to clarify whether a citizen did have the duty to stop when a police officer makes a request, and to create an offence for that for no culpable conduct that is perceivable, and create that into a strict or absolute liability offence. Those are the only comments I have on that portion.

8:30 p.m.

Mr. Chairman: Mr. Renwick, you had your hand up a little before.

Mr. Roy: Wait a second. Should we not finish? I think he has some submissions on other sections of the bill. Have I got my name down?

Mr. Chairman: Yes, after Mr. Elston, who is the official critic, but this was leading into this. If Mr. Elston wishes to carry on with this, but rather than go into another section of the bill, do you wish Mr. Thomas to finish his entire submission?

Mr. Roy: I thought we should. Generally, that is what we do with witnesses, do we not?

Mr. Chairman: Fine.

Mr. Roy: I do not want to interfere, but I thought he had some further submissions.

Mr. Thomas: I am just going on to the first part now, and I will not be nearly as long on that as I was with respect to the others, but I am quite in your hands. If you want to deal with this part, keep it separate from the other, that is the way it is.



Mr. Chairman: No. Mr. Elston has the right to the first question; so you carry on and then we will go into the questioning.

Mr. Thomas: With respect to the--

Mr. Renwick: Mr. Chairman, if I may, I respect Mr. Elston's right to be first in the questioning and Mr. Roy's right to order the business of the committee, but I wanted to correct, with greatest respect to my friend the Deputy Minister, what he had to say. He cannot call in aid the situation which occurred in Riverdale riding. There, the police had spotted a car, which was identified by the police as a stolen car, and they therefore signalled the car to stop. The car did not stop, and the pursuit took place. It could have had grave consequences. I submit that situation had nothing to do with the provision which is before us. The police there were acting in the execution of their duty.

What this says is the reverse. This says that the most law-abiding citizen in the world, travelling with a car in perfect working order, within the speed limit--

Will the government whip let us get on with the discussion of the business of the committee? It is all right to come in and count heads, but do not disrupt us.

Hon. Mr. Gregory: I am sorry.

Mr. Renwick: I will speak to you afterwards.

Hon. Mr. Gregory: Let us do that.

Mr. Renwick: What this is saying, and I have given a lot of thought to this, is that the most law-abiding person in the world could be driving along any street in Toronto, perfectly within the law, and there would be nothing observable in his conduct; other than that person is totally safe in his driving and whatever else you want to say about him, there would be no evidence of anything. This section says that the police officer may call that person to a halt.

The point I am trying to make, and which Mr. Thomas is also speaking about, is that this power does not now exist in Ontario in the way in which it is phrased, nor does it exist in the United States of America, nor does it exist in England. What they have done here is to couple two things: the power in the police officer to require the stop, and the duty on the citizen to comply with the stop.

I am not making a value judgement on it. I am simply saying that is what this says. The value judgement that then has to be made is whether that is an acceptable decision here. I am influenced a great deal by what I said this afternoon. I have talked to a lot of people and asked them the simple question. Most people, all of them, believe that you do have to stop, and my colleague said to me, "Don't you have to stop if the police officer says to stop?"

All I am saying is that is not the way in which the world is. It touches upon what Mr. Conway raised this afternoon. What is the difference in the civil liberties that one has when you are a pedestrian as distinct from the civil liberties you have when you are sitting behind the wheel of a car? It is a very real question that was asked.

I don't think you can call in aid the fact that the minister has seen fit to tag into it an additional penalty if your failure to stop precipitates a pursuit. You will notice the margin says "escape by flight." But that isn't the real question. The real question is that if I, sober, in a car that is properly working, in accordance with the rules of the road, am driving along Danforth Avenue and am called upon to stop and decide not to stop--I don't precipitate a pursuit by the police; I just continue going about my business at 20 kilometres an hour, I turn the corner and go up where I am going and so on--this will not only make it an offence, but also, having nothing to do with precipitating a pursuit by the police, makes it by this strange wording in clause 3 of the bill an arrestable offence without a warrant.

I am driving along perfectly in order within the speed limit, the police officer signals to me and I go on about my business. I turn the next corner and so on, and a police car comes in front of me and stops me, he can arrest me without a warrant and take me into detention. That is what is being done.

I am not making a value judgement on it; I am simply trying to say to the committee that that is what you have to understand is happening, and that is different. At present, just the same as if I am walking down the street and a police officer taps me on the shoulder, to use the illustration the Solicitor General used this afternoon, I don't have to stop. There is nothing in the law which says that if I am a law-abiding citizen the police officer can stop me on the street and require me to do anything. Sure, as a citizen I may want to co-operate and I may decide to stop. He may say to me, "What is your name?" and I can say to him most politely, "Officer, that is not any of your business," and I can turn and walk away. I can also, if I want to, give him my name.

That is what we are dealing with and, as I say, the distinctions get extremely fine but very important and very legal. I think that we have to understand that. Everybody I have talked to believes the police already have the power to require you to stop--not what you have to do when you do stop, but to stop you--and I think on balance it is probably better for everybody to know that the police do have that power.

Whether you agree with my rationale is an entirely different thing, but I want to make the point very clearly that I am not interested in producing litigation for lawyers--that is not what we are about; the lawyers will produce the litigation anyway--but I am very interested that the committee understand that this section has little, if anything, to do with section 1 of the bill and is a significantly different situation which we will be creating in Ontario which does not exist in the United States or in England.

Mr. Thomas: The only comment that I have to make is that

I heard your comments this afternoon, Mr. Renwick, and I agree with them. That is what is being done, but in my respectful submission--you may not have been here when I was speaking earlier--

Mr. Renwick: I had to leave, yes.

Mr. Thomas: It may very well be that it is far greater than that. It is far greater than simply saying the police have the right to stop with you. I agree, most citizens think they have to because they assume the police are enforcing the Highway Traffic Act or some other statute, and they are doing their job, their duty, or maybe they think, "My headlight is out." Most people want to co-operate. There are lots of people who don't and regard it as a terrible invasion of their rights if there is any interference with their freedom of movement. There are a lot of people who think that.

It is far greater to clarify that you have a duty to stop when a police officer is enforcing the provisions of the Highway Traffic Act than to say that you have a duty to stop safely, and if you don't, you are going to be treated as if you have committed a criminal offence under the Criminal Code; that is what the penalty is, greater than impaired driving. That is what it is.

8:40 p.m.

In a normal case now, without this, if a person fails to stop, apart from charging him with dangerous driving, careless driving or whatever, the officer can then charge the citizen with wilfully obstructing the peace officer in the execution of his duty. The word "wilful" involves mens rea; execution of his duty has to be established, and that is carrying out his duty as a police officer under the Highway Traffic Act or his general duties. That is what the court has to be shown. Then, as you know, the judge has to consider whether the accused was acting wilfully.

I am not promoting having accused people charged en masse under the Criminal Code, but it is one thing to suggest, to clarify the law, that when a police officer on reasonable grounds requires one to stop, to enforce the provisions of the Highway Traffic Act, that one has a duty to do so. That is fine; you can put that in the Highway Traffic Act. The Attorney General might say there has to be a penalty attached, or it is meaningless, but that is not the point. The point before was that it was not there.

But if it is there, and the person does not stop, he can be charged under the Criminal Code, he can be charged with something else, but this catches your citizen who is doing nothing wrong and who does not come to a safe stop; the police officer says, "I do not like the way you tried to stop; it was not done safely" and the person is charged. What is his defence? I suggest his defence does not exist. He does not have a defence.

Mr. Hilton: I suggest, Mr. Thomas, that the word "safe" is in there for the driver's benefit. He does not stop in the middle of Highway 401. He makes a safe stop off on the shoulder. He does not jam on his brakes so that the man behind him is going to run into him. He brings it to a safe stop. It works to his benefit.



Mr. Thomas: It could be interpreted that way, but that is it. That is his defence: "I stopped safely as best I could." That is all he has got going for him. It is a far cry from clarifying the law. The point of view of an officer carrying out his duties and then his conduct is being tested in the courts, whether it is in a civil action, a criminal action or a quasi-criminal action, and the citizen says: "I did not have to stop. I did not have to comply with the RIDE program. I did not have to comply with this officer. He did not have any reasonable grounds to stop me."

It is one thing to put in the act that one has to stop on a reasonable request on reasonable grounds by an officer who is doing his duty under the act, but it is another thing to create that as a specific offence with a penalty greater than practically every section of the Highway Traffic Act.

Mr. Chairman: Are you through with that question? With the consent of Mr. Elston--

Mr. Roy: Some of us have questions on this as well. Are we going to just--

Mr. Chairman: The rule here is with the consent of the following speaker. Mr. Elston can say no and then he--

Mr. Elston: I think we should get on with the present matter. It is going on and we are going to have a lot of questions, I am sure, from Mr. Thomas.

Mr. Thomas: The next point I want to make is with respect to the suspension of driving privileges for 12 hours. I know it has been done in other areas, in other provinces, but I am not familiar with the extent of the experience in other provinces. We have not had an opportunity to look into the matter because this proposed legislation is so new.

One thing that does trouble me is, in subsection 3, that when a person is charged with failing to comply with the demand, whether it is a roadside Alert, or whether it is just a demand to take a breathalyser test, you are giving the police officer there the power to request the person to surrender his driver's licence. Under the Criminal Code, a citizen has a defence. It sometimes may not be as broad a defence as might be perceived, but under the section requiring him to comply with the demand, he has the defence of reasonable excuse, and the onus is in effect on the accused to establish his excuse as reasonable and lawful.

But in this situation here, in my respectful submission, subsection 3 is clearly a situation where the police officer is acting as judge and jury, because what's happening is a person may very well have a reasonable excuse for not complying with the demand. He may not have been the driver; he may have not had any alcohol in his system. There may be other reasons that may be quite reasonable.

Don't forget, under the Criminal Code the officer has to have reasonable and probable grounds to make the demand. In this

situation here, it refers to the sections of the Criminal Code, and if you will look at section 235, "where a peace officer on reasonable and probable grounds believes that a person is committing..." so he has to have reasonable and probable grounds.

Let us deal with section 235. Where a police officer on reasonable and probable grounds thinks a citizen is driving while impaired, he makes a demand. If the person refuses to comply with that demand, the police officer takes away his driver's licence. It is clear then that the police officer is acting right then as the judge, because it is the same thing as if he is convicted. The whole point about reasonable and probable grounds, the whole point about the accused having a reasonable excuse has gone by the board. The words "reasonable excuse" and "reasonable and probable grounds" don't mean anything, because if he refuses then his driver's licence is gone.

To me, that is a rather repugnant provision. In other words, if a citizen exercises his right, what he perceives, he may be dead wrong, but if he says, "I have a reasonable excuse, and I am going to have this tested in the courts. I don't have to comply with your request for the demand," for whatever reason within the narrow definition, it does not matter because his driver's licence is gone.

That is quite a different provision from the other provision whereby the citizen is required to take a test, takes the test and blows over 0.05; then his licence is gone for the period of time. Without blending the two of them--they are two separate matters, in my respectful submission, because if the individual refuses to comply with the demand his licence is gone. It doesn't matter whether some day down the road in a court in this province he is found to have a reasonable excuse, and it does not matter whether some day down the road a judge of the provincial court finds that the police officer did not have reasonable and probable grounds; it makes no difference, the licence is gone and that's that.

Really, the presumption of innocence, which for a few hundred years we thought was the foundation of our system, is gone. That subsection 3 takes care of that. You will be making a rather significant change in the history of our law by enacting that.

With respect to the other subsections, Dr. Smith suggests there may be constitutional reasons for that. I certainly do not know that much about constitutional law, but I suspect that is the reason, or it may be that the Attorney General does not want to create an offence of driving over 0.05. Maybe citizens of the province will accept that more than they would an offence charged against them. You will be hearing from Dr. Lucas later, but make up your own mind on this, whether the machine that is being proposed is the type of machine you can rely on.

You are not here talking about the Borkenstein breathalyser; you are talking about a roadside Alert machine, as I see it. The roadside Alert machine that is available today--Dr. Lucas will correct me and certainly will tell you a lot more about it; he is one of the experts in the world--from what I know about it, is calibrated prior to going out in the police car.

The interesting point about this legislation--it has been used in other provinces but that does not make it right, just because errors have been compounded--is it is presumed, unless you can show to the contrary, that the machine was calibrated properly and working properly.

I ask you, how can you possibly demonstrate days later or weeks later that particular machine was calibrated properly that night? You are talking about 0.05. I believe it was 1968 when this legislation was put into the Criminal Code. A lot of us will remember that this matter was talked about throughout the country. Carnage on the road by impaired drivers was a very important issue in this country. It was debated at length, and Parliament in its wisdom saw fit to establish the level at 0.08. Now we are going below that. Everyone knows there is a margin of error in the Borkenstein machine. Some people will say it is 0.01. Some people will say it is more, some people will say it is less, but certainly it is not an infallible machine.

When you are getting down to 0.05 you are getting awfully close to an area of difficulty, depending on who the individual is, but this machine you are talking about is not the Borkenstein breathalyser. It is another machine; it is a roadside Alert. It is not as accurate as the Borkenstein machine, in my respectful submission, and it is something you are going to have to consider when you are deciding whether you are going to enact this legislation.

The only thing I would like to point out is that, as I said, it is pretty difficult to argue against legislation that is designed to eliminate drinking drivers, but the Highway Traffic Act is also designed to eliminate people who drive carelessly, who make improper left-hand turns, who travel over the centre of the highway. Certainly when I was a crown attorney, and as a defence counsel, I saw a great number of tragic accidents caused by people who were sober but driving wildly, furiously, on the wrong side of the road, racing in a completely dangerous manner that had nothing to do with alcohol.

The voluntary ingestion of alcohol and the driving of a motor vehicle do not mix; there is no question about that. But to start taking away a driver's licence for whatever period of time, and having the officer make that judgement backed up by a machine when the reading is quite low, is something you are going to have to consider.

There are a lot of practical problems here too. Are you satisfied this machine is accurate enough to permit this? Are you satisfied this is necessary? Are you satisfied at what is going on now in this metropolitan area, if we can rely on what we read and hear through the media, that the spot checks are going on fast and furious, impaired drivers are being arrested at an ever-increasing rate and that things are going along quite well?

I don't want to get into this too much, but I don't foresee the great urgency in this legislation. I do not see why the Attorney General is rushing this through so quickly.



Mr. Hilton: Mr. Thomas, you have made several statements here, one about this machine--

Mr. Roy: Can we let this witness finish and then you can intervene?

Mr. Hilton: All right; I will bow to that.

Mr. Thomas: I am not going to be very much longer, but--

Mr. Williams: Mr. Chairman, just a minute, I would like to hear what the--

Mr. Chairman: No. If it is challenged--

Mr. Williams: I don't think Mr. Roy should be telling us who can speak on this committee. I am sick of being dictated to by our friend over here.

Mr. Roy: Talk about getting sick, I am sick just looking at you, but I put up with you.

Mr. Chairman: All right, let's settle down. It is technically correct, Mr. Williams, Mr. Roy.

Mr. Hilton: I am sorry; I apologize.

Mr. Chairman: That is all right. Mr. Roy, Mr. Williams has not said anything in this today that warrants that.

Mr. Piché: Mr. Chairman, I think there should be an apology from Mr. Roy.

Mr. Chairman: That is just plenty.

Interjections.

Mr. Piché: We are here to work together, and I do not think that language should be accepted here.

Mr. Thomas: I hope I have not precipitated it.

Mr. Chairman: No, you certainly have not. This has been nine or 10 months, the usual.

Interjections.

Mr. Thomas: I can assure you gentlemen that I am used to speaking in a courtroom where sometimes the test is to say what you have to say quickly, swiftly and sit down. Perhaps that is what I will attempt to do now.

Regarding the provision with respect to the 12 hours, as I said, it is difficult to argue against something that is designed to prevent carnage on the road. I just say to you that you should be satisfied the machines to be used are going to be such that when you are getting down to this fine area you can say that you can rely on this. If this is an infringement on a citizen's right to

drive, even if he has had one drink, if you can satisfy yourself the machine at this point can be accurate, it may be the citizens will accept that their licences could be taken away for 12 hours.

In effect, what happens now if a person is charged with impaired driving or driving over 80 milligrams, is that he is taken to the station, he is arrested, he is detained for a period of time, he is let go, his car keys are taken, his driver's licence is not, but he does not have a vehicle to drive and he has to get home. It would be a foolish citizen who would then get behind the wheel of a car. It has happened. I certainly recall--

Mr. Piché: Or should you say it is happening all the time right now?

Mr. Thomas: I am not saying it is happening all the time, because that would be as absurd as perhaps--I will not say it, but that is observed as happening all the time. Are you suggesting, sir--

Mr. Piché: No. Your attitude does not show that you care what is happening right now.

Mr. Thomas: What do you mean my attitude does not show?

Mr. Piché: I put a question right away and you react as if I should not ask questions of you.

Interjections.

Mr. Thomas: I certainly am open to any question whatsoever. Are you suggesting that the people of this province, when they are arrested and are taken to the station, are universally driving their cars the minute they get out?

Mr. Piché: No, but this has been happening. That is the question I put to you, and I thought you would react to that, but you have reacted in a different way than I thought you would as being in the legal profession, which we are supposed to look up to.

Mr. Roy: What is wrong with you guys tonight?

Mr. Piché: Mr. Roy, if I were you, I would not comment.

Mr. Chairman: Gentlemen, this is--

Mr. Piché: I have as much right as you have to ask the question I ask without you and the legal profession--look where we are today with the legal profession.

Mr. Chairman: That is editorial comment.

Mr. Piché: You should not insult--

Mr. Chairman: Mr. Roy, Mr. Piché, order.

Mr. Thomas: I said it was happening. That is what I said was the problem. It is happening. It does happen. What I said to

you was that I have had cases where that has happened. That is a problem. What I suggested was that it is not a universal problem. Most people do not leave the police station, find a car they can drive and take off. It is not a universal problem, but it does happen; so this is a very practical problem.

If someone has been arrested for being over 80, he still has his driver's licence; he could still drive. That is an important problem. What we have now is the police officers exercising in many cases good judgement as to when they can allow a person to go. Very often they get a taxi for the individual, call someone in the family and they see to it that the person gets home safely.

That is what happens, but it is a real problem when you consider the safety of the driver and other people on the road as to whether that person should be permitted to leave the station with his driver's licence, particularly if he has only been in the hands of the police officer an hour and a half and he has blown 200 or something of that nature.

It is a frightening thing to think that a citizen could leave the station with his driver's licence and, if a vehicle were nearby, if he stole one, he could be quite properly driving other than being subject to arrest again for impaired driving. I think you and I were at cross-purposes. It happens. It does not happen universally, but it does happen.

But you have to balance that against the question of whether lifting a driver's licence for 12 hours is something that is repugnant to most people. It may not be. I am only saying when you get down to the 0.05 level, when you get down to that point, are you satisfied the machine that is going to be used is valid?

9 p.m.

Is it a machine that will be sufficiently accurate that you can satisfy yourself that this legislation is such that it will protect people on the road? I know drinking and driving is a very emotional point, but there is an awful lot of carnage on the highway that has nothing to do with alcohol. Licences are rarely taken away for careless driving in this province in the courts; usually, it is a \$100 fine. You hear of some horrible cases of careless driving. Maybe that is the courts' fault. I do not know.

Here you have a driver's licence being taken away on the spot, right there and then, because a person is at 0.05 measured by a machine that, until you hear more about it, you really do not know much about. My only point is that I do not accept the fact--you may; I do not--that the police are hamstrung now. Their programs are going on.

They are stopping people in Toronto. People are complying, people are being arrested for impaired driving and the programs are going on. They have not altered their conduct really in any way. So I am only saying, "What is the rush?" I do not mean that to be rude. I just say that this section has far-reaching effects and I think you ought to, with respect, find out. I do not know the answers. I just got this bill today.



I would like to know what has happened in Manitoba, what has happened in Vancouver. What has been the experience? That is easy to find out. Your committee could find that out swiftly. How good is this equipment? Is this roadside equipment accurate enough that you can say to your constituents, "Yes, if you are going through our area and you are 0.05, it is not too much of an inconvenience to have your licence go."

It may be that your licence should go if you are charged with being over 80 or more. Maybe it should go; maybe that should have been part of the law all along just to prevent that case where a citizen gets in his car or a stolen car and drives.

The one I am troubled with the most, and I have said this, is subsection 3 where it indicates your driver's licence is surrendered if you refuse to comply with the demand, even though under the Criminal Code one test is reasonable and probable grounds and then, of course, the citizen has the right to advance the defence that he had a reasonable excuse. Those are the submissions that I have to make with respect to that.

Mr. Elston: There are a couple of things I wonder whether you might like to comment on.

Mr. Borovoy--you were here for a good portion of his presentation--suggested that, since there is no provision for recourse on the 12-hour suspension, we should build in some sort of a section that would give the person redress or the chance to at least recoup some of his out-of-pocket expenses or whatever in the situation where there was an unreasonable imposition of the suspension. I wonder if you might comment on that briefly in the way that you might approach advising a client on something like that.

Mr. Thomas: That is sort of small consolation after you have had your licence taken away for 12 hours and you are out of pocket a few dollars. I suppose there should be some right of redress. I do not know much about the civil law, but I imagine that you would not be able really to sue for--you might be able to sue for false imprisonment or false arrest; that might be part of the damages. But that would then involve a citizen getting into a pretty complicated civil action in the courts.

Mr. Elston: Which would be fairly expensive.

Mr. Thomas: Which would be very expensive. It may very well be that there should be some--I did not want to duplicate Mr. Borovoy's point about the right of review, but the difficulty with this legislation, I think as he pointed out, is that there is nobody overlooking it. It is there but there is no recourse or right of review. The decision is made and that is that. In many matters and under the Criminal Code there is no such power but there is the power to sue for false arrest or false imprisonment. Here, of course, the only thing that really happens is your licence is taken away for 12 hours and you do lose, perhaps, your car.

I do not know. This is a very difficult area. There may be

members of our association who would take strong views one way or another. I have not had enough time to canvass everybody. It is an area where some lawyers would feel that this legislation--the spirit of it is good. It would be hard to argue against the fact that people who have voluntarily ingested alcohol and have reached a certain level, which might be bordering on what is considered by the Criminal Code to be unsafe and socially unacceptable, should be driving.

I guess it is the old question: Where do you draw the line? Is 0.05 a practical level? What are the experiences in the other provinces? Should there be recourse to the police commission or to the Solicitor General upon proof of reasonable expenses for the direct reimbursement that way so you do not have to go through a long court action over something of this nature? There should be some right of review. The citizen should have the right to look to someone to assist him in perhaps remedying what he regards as interference in his rights.

Mr. Elston: Just to carry on a little further on this suspension: I notice when we look at the proposed section 30(a), in subsections 1, 2 and 3, as far as that goes, it says, "The police officer may request the person to surrender his driver's licence." In other words, there is some sort of discretion there. I presume your comments concerning the review of that person's decision would follow along in those lines.

Mr. Thomas: That is right. I would rather have the word "may" there than "shall," because there may be reasons why the police officer may exercise his discretion in some other way. I suppose the officer, if the man lives 50 feet down the road or something of that nature and he satisfies himself that he is a decent individual, he might exercise his discretion the other way. It does not do much for the person who loses out. But I would certainly rather see some discretion for the officer at least to exercise his discretion in favour of the citizen than to be hamstrung that he has to take it away no matter what.

Mr. Elston: I would like your comment on the fact that our discussions of section 2 of this bill indicate that under subsection 3 of the proposed section 189(a) of the act it says, "Where a person is convicted of an offence under subsection 2 and the court is satisfied on the evidence that the person continued...the court shall...." I guess what you are going to say is that perhaps this same rationale would hold that the court ought to have that discretion as well to exercise--

Mr. Thomas: I suggest that the word "shall" should be "may." I suggest in subsection 3 it should say the word "wilfully" if this section is going to be retained, because a person may be avoiding a police officer for all sorts of reasons that have nothing to do with culpable conduct on his part.

There could be someone else in the car with him who is causing him to act this way. He may have some legitimate reason. It may be hard to think of it, but there may be situations like that. Certainly a word should be in there to permit the court to find that the individual was not culpable. It is not every police chase

where someone should lose his licence for three years.

It seems to me that not only should the conduct of the person being pursued be examined carefully, but also we should have some examination of the conduct of the pursuer. That section does not allow for that. It simply says that if a person continues to avoid the police while he is being chased, his driver's licence must be suspended for three years.

It does not allow any room for an explanation by the accused person that he was not doing wilfully what he was doing. He could have panicked. He could have been frightened. How do we know? They might have been firing at him. He might have thought that the best way to leave the scene was to keep running. I do not know. You can think of all sorts of situations.

9:10 p.m.

All I am saying is, put a word in that section that permits the accused person to put forth his explanation for his conduct and have it viewed in the light of the conduct of the person pursuing him.

Mr. Hilton: Mr. Chairman, with fear of getting Mr. Roy's--

Mr. Roy: No, no--

Mr. Piché: I wouldn't worry about Mr. Roy if I were you.

Mr. Roy: Mr. Chairman, just to correct the record, before the other members get excited: All I was suggesting was that we should at least listen to the witness; then, once he is finished, I take no objection to people asking him questions, including the Deputy Attorney General, who I would hope would comment on this question of "shall" or "wilfully" or something like that.

Mr. Mitchell: Surely you can recognize the right, as we always have, that there might be a supplementary question that is raised as a result.

Mr. Roy: Yes, I know. All I am saying is that the Attorney General does not have any more privileges than any other members to interrupt a witness.

Mr. Hilton: Except that I was merely interrupting, sir, in a helpful way--

Mr. Roy: Let's not worry about it. Let's go.

Mr. Hilton:--to say that we would be happy to see the word "wilfully" inserted in section 2(3) so that the section would read: "Where a person is convicted of an offence under subsection 2 and the court is satisfied on the evidence that the person wilfully continued to avoid the police." That would allow the defences you have mentioned to be brought up.

Mr. Roy: What about the word "shall?"



Mr. Hilton: We prefer to leave "shall" as it is.

Mr. Williams: Mr. Chairman, shouldn't we be dealing with this on a clause-by-clause basis when we get--

Mr. Hilton: But I was just doing this, Mr. Williams, to see if it could circumvent the discussion on the point.

Mr. Roy: May I ask a question while we are discussing the very point that Mr. Elston has raised in relation to what this witness has said? That is, you make no distinction as to whether this chase has been half a block or a block or it has been at 100 miles an hour on Yonge Street or 25 miles an hour on some county road. The court has no discretion; it shall be for a period of three years. Why don't you entrust your court with some discretion on something like that?

Mr. Hilton: We trust the court with the discretion but it has been my understanding, and perhaps I should not be the first to say it, that what gave us a great deal of concern in drawing up this legislation was the pressure from your party, sir, that there should be stricter legislation to prohibit high-speed chases, and that is what we are aiming at.

Mr. Roy: Fine. Prohibit high-speed chases, but give the court some discretion. There are different types of high-speed chases. If you want to make the maximum term to be five years, that is fine as well, but at least you should give the court some discretion to discriminate between a chase which may be a very serious chase and another one which may not be, one that happens on Yonge Street at 12 noon or around a school where there are a bunch of kids or out there in the middle of the country where there is nobody around. Surely you can see that distinction, and you just do not come along and impose the same term no matter what the chase was about, no matter how serious it was.

Mr. Hilton: If you read those words "wilfully continued to avoid," I think you will see there has to be a continuance, it has to be wilful and it has to be without excuse. But I think of the facts, sir, and I think of a high-speed chase in Halton which had not proceeded more than half a block and there were three killed.

Mr. Roy: Okay, that is very serious. What if he goes half a block, it is at three o'clock in the morning and there is not a soul around and he is only going 15 miles an hour? Do you still give him three years?

Mr. Hilton: It would not be a high-speed chase.

Mr. Roy: This does not say "high-speed chase." It just says there is pursuit going on. Do you see anything about speed in this thing?

Mr. Thomas: What bothers me, Mr. Deputy, is that this subsection is coupled in a section that says the only conduct on the part of the citizen is that he failed to safely stop. Then it goes on to say that he avoided the police while a police officer

gave pursuit. The initial offence is that he did not safely stop; then he is pursued. If you put the word "wilfully" in there, the court must take his away his licence for three years.

I am just wondering whether this provision is being put in there because the Criminal Code does not contain legislation because it was ruled ultra vires that you can charge a person with driving under suspension.

Mr. Hilton: We don't know whether the person is under suspension or not.

Mr. Roy: Yes. I do not understand your reasoning there.

Mr. Thomas: My point is that here is a section where you are suspending a person's licence for three years. The reasoning is not exactly apt, I suppose, but--

Mr. Roy: As you know, there has already been an amendment to the Highway Traffic Act to take care of the ruling that the Criminal Code was ultra vires dealing with the suspension of licences. We have already passed an amendment to that, providing for suspension for how long?

Mr. Hilton: What is it now? I do not know what it is.

Mr. Roy: Anyway, it is at least three years, is it not?

Mr. Hilton: It's about that, yes, I think.

Mr. Thomas: In a high-speed chase the offence of dangerous driving is normally charged; certainly criminal negligence is often considered, the wanton, reckless disregard for the lives and safety of others. You do not need to rely on this section. Certainly coupled with those sections under the Criminal Code dealing with wanton and reckless disregard for the lives and safety of others and dangerous driving, there is no automatic suspension for three years.

What you have here is that the offence might be dangerous driving under the Criminal Code or criminal negligence under the Criminal Code, which basically are the charges that arise out of police chases. Then you have this rider that will be tacked on under subsection 3. What will happen is that the court might convict the person of dangerous driving and suspend him for a year, as part of their power to do so. Under this section, if that section is proceeded with, the court will have to suspend for three years.

It seems to me that what has happened is that the province is going to be adding a mandatory three-year suspension for conduct that is really intra vires the federal government, that being dangerous driving or criminal negligence, and ultra vires the provincial government. What the provincial government is really doing is putting in a penalty as part of its legislation which would be much stronger than the penalty under the Criminal Code.

Mr. Hilton: I think the ingredients here, sir, are that

the person has to wilfully--accepting that word--continue; the next point that has to be proven is the avoidance of police, and it has to be done while a police officer gave pursuit.

Mr. Thomas: My only comment, and I am not going to repeat it, is just that if the word "may" is there the court will have the power as it would if it saw a very bad case of criminal negligence or dangerous driving. The court will have that power. But it seems rather odd that the court would have a discretion with respect to the serious offences under the Criminal Code but no discretion under this section.

Mr. Chairman: May I interject here? Rather than this matter becoming repetitious, the Solicitor General did state late this afternoon that it was policy. Remember you brought that up, and he said rather pointedly and briefly that was policy and, by his answer, that there was no further discussion in his mind on that. I do believe we are getting repetitious; it was brought up and it was answered once.

Mr. Thomas: He definitely said that was policy; so I assumed that was--

Interjections.

Mr. Chairman: However, I am talking about the repetition of the matter. He did speak to that. And rather than have the Deputy Solicitor General again have to speak to that same question--

Mr. Thomas: I have made my point on that. I just say it should be "may" in the light of those reasons.

Mr. Piché: On the wording, Mr. Chairman, can I have the floor?

Mr. Chairman: No. Mr. Elston still has it; I am sorry, Mr. Piché.

Mr. Elston: Let him go ahead if it's on the same point.

9:20 p.m.

Mr. Piché: This is rather important wording, and you are suggesting is that it should be "may" instead of "shall". I am a great believer that "may" is always a better word than "shall" in cases like that. I think that discretion in a case like that is very important. I am surprised that this would not be considered as far as the bill is concerned, because is that not what the law is all about, "may," never "shall"? Do you not consider what has happened when you have the facts in front of you and you decide on facts instead of what you have mentioned?

I have to agree with that and I have to agree with Mr. Roy when he mentioned a while ago that discretion must be in front of a judge when it comes to that. The word "may," instead of "shall," could become very important in this case. "Shall" is a word that sometimes I wonder whether it should even be in the dictionary.



Mr. Chairman: Which member of the committee would like to reiterate the Solicitor General's answer to that, rather than become repetitious again?

Mr. Roy: We saw the Solicitor General apparently accept one suggestion. We are hopeful, whether or not he said it was policy, that he will give some consideration to this impartial witness--you can hardly say that this witness is impartial--or the fact that my colleague from your caucus or some of my other colleagues are concerned that, given different factual situations, we should still maintain some discretion in the judge.

The only time I have seen where there is no discretion, I can say to you, Mr. Chairman, is when licenses are suspended after second or third offences under the Criminal Code, and in those circumstances at least a fellow has committed a second or a third offence. For a third offence of impaired driving under the Criminal Code, I think you do lose it for three years; that is automatic, with no discretion. I understand that. If you get into a third offence, I suppose that is basically what you deserve. You have been convicted by the court and you suffer the consequences. But in this particular case, where there could be a variety of degrees to this offence, on the first offence there is no discretion; the judge has to impose three years. I just think it is--

Mr. Hilton: If I may say again in answer to that, Mr. Chairman, I think the minister pointed out that it was policy. Being a civil servant, I cannot speak for the government, but my understanding is that the government considers very seriously the aspect of high-speed chases and the danger and loss of life that has flowed from it. It is the government's intention to make it apparent to people that it does take such a serious view of it, in the hope that it will stop some of it at least.

Mr. Chairman: Mr. Elston, you still have the floor.

Mr. Elston: I wonder if we might go on to the proposed section 189(a). You had a considerable amount of difficulty with this sort of sweeping provision. We have also addressed a situation where we tied this particular provision perhaps to a random or prearranged type of stopping system where you stopped every third car or every fourth car or whatever and tied it very closely to the reduce impaired driving everywhere program, which is in effect now. I suppose that would alleviate some of your difficulties with the section.

Mr. Thomas: Let us assume the RIDE program by its very nature is at random. This section is not at random; you can stop anybody, at any time or any place for no reason whatsoever. Frankly, I really am not able to examine the first proposal in clause 1 of this proposed legislation and say, as I gather Mr. Borovoy said, that I am not too concerned because it was random. I do not take any comfort in that. What is wrong with a police officer stopping an individual and, if he smells the odour of alcohol on his breath, whether it is at random or not, he just gets a hunch and stops him? What is wrong with that?

Mr. Hilton: That is exactly what the section says, sir,

with respect.

Mr. Thomas: I am sorry. Which section, sir?

Mr. Hilton: The breathalyser sections say that, exactly. He has to have reasonable suspicion, and he has now to apply this.

Mr. Elston: You mean section 189a?

Mr. Hilton: No, section 30a.

Mr. Thomas: That is right. But the point--

Mr. Hilton: "Where, upon demand of a police officer made under section 234.1 of the Criminal Code (Canada)," which says, "Where a police officer reasonably suspects that a person who is driving a motor vehicle or has care and control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may demand..."

Mr. Roy: That is to make a demand though. That is not to stop him.

Mr. Elston: That has nothing to do with the stopping section.

Mr. Hilton: Well, as to the stopping section, I thought we had been all over that. It is broad.

Mr. Elston: Very. I was asking the question whether, if we tied that section to the RIDE program, in other words, limited the scope of proposed section 189a, that would alleviate--

Mr. Hilton: I did not understand the answer, to be quite honest.

Mr. Thomas: I was not responding to that. I did not understand that question. I regard them as two separate matters. If you tied it in it might possibly work, but I cannot see any reason why the police do not have the authority now under the Highway Traffic Act. If they are given the power, as I suggested, if you amend the Highway Traffic Act and simply say that a citizen must stop when a police officer is exercising his powers under the Highway Traffic Act, that clarifies the matter. It does not create such a broad sweeping offence and it does not give the police officer that broad power to stop for no reason whatsoever.

This is not even linked to any provision in the Highway Traffic Act, other than it would be in itself. It is not linked to enforcing the provisions of the act, or careless driving, or failing to yield the right of way, or some other rule-of-the-road violation, or an unsafe vehicle. It is not linked to anything like that. It just says he can stop you for any reason whatsoever, or for no reason.

I think it would be, with respect, a mistake to take that section and try to wed it to the RIDE program. I think the one can stand by itself and this other, in my respectful submission, should

not be enacted in its present form, but could be put in in a modified form to clarify the law as to the duty of the citizen in response to a police officer who is exercising his powers under the Highway Traffic Act.

Mr. Roy: But, Mr. Thomas, as I understand what the Attorney General is saying, and what my colleague is trying to say, they do feel that to have an effective RIDE program they need the powers that are given under section 2. Isn't that what the Attorney General is suggesting? This is because of the case law, which suggests that the right to stop someone without reason or without enforcing other programs is questionable in the Dedman case, and I agree with that decision.

Any question about that is alleviated by the passing of section 2, which would give the police a right to stop someone and then they could probably enforce the RIDE program. In other words, for section 1 to be effective, you have to stop the vehicle, and I guess that is the biggest problem the police have right now, that they find they cannot. So I think what my colleague is suggesting is there might be some way we would limit section 2 to the RIDE program only or to the high-speed chases.

Mr. Thomas: You mean subsection 2, do you?

Mr. Roy: Well, section 2.

Mr. Elston: Perhaps you might comment on that as well, Mr. Hilton. I think there has been material from Mr. Borovoy and from Mr. Thomas that suggests there are a great number of powers now for the police to exercise their duty to stop people who offend provisions of various statutes. Could you tell us why we have to have such a broad sweeping subsection 1 under the proposed section 189a?

9:30 p.m.

Mr. Hilton: I do not not know if I am exactly the one who should properly do this. But the situation is, as I understand it, in the Dedman case the divisional court found that--

Mr. Roy: The Court of Appeal, wasn't it?

Mr. Hilton: Yes, but in the divisional court first.

Mr. Renwick: It was an appeal in the High Court from the provincial judge.

Mr. Hilton: Yes, that was Mr. Maloney. The situation, as I understand it--and there are those here who understand it much better than I do--Murray Segal has argued this before that judge and then before the Court of Appeal. I can surmise an answer, but I think Murray Segal can answer it better.

Mr. Segal: As I understand the question it is, why is the power so broad? The answer, off the top of my head, is we have thought about it, but the section as presented would have a few advantages. One, it would clarify what we always believed to be the



law, that there was a power for a police officer to request a citizen to stop and the duty to assist that peace officer.

Mr. Elston: Whether he is in a car or not?

Mr. Segal: I am speaking about cars.

Mr. Elston: Only about cars?

Mr. Segal: Yes. There was a perception, as Mr. Renwick has said, on behalf of the citizenry as to their duties when approached by a police officer for assistance. It is my personal view that the way the section is drafted will assist us, in that it will let citizens know exactly where they stand vis-à-vis police officers generally while driving vehicles. Second, it will legitimize the RIDE program or other programs similar to RIDE regarding drinking and driving. So it will have two effects.

Aside from the RIDE program, we tried to convince the courts that the power to request a licence, which the Legislature has long recognized, was broad enough to permit a RIDE-type program. The courts had some difficulty with that notion. There has been a lot of discussion about an invitation to clarify the problem.

Mr. Elston: If you want to come back to that a little bit later, I want to raise that issue with you again in the light of what Mr. Thomas has indicated.

Mr. Segal: It was my own view that the best approach to solving the relationships between police and drivers, on the one hand, and the RIDE program would be to spell out exactly what we are trying to do instead of, as we tried to do before, arguing that the power to look at a licence was sufficient authority to engage in RIDE-type programs. It would just set out what the police may do and set out the duty of the citizen and at the same time legitimize a program regarding drinking and driving.

Just let me add one more thing. There is a danger, I believe, and it is a personal opinion, that, for example, if there was a power to stop restricted to RIDE, that would leave open the issue of whether the police have the power to stop drivers other than in a RIDE or similar program situation. That is also a concern, especially because it was our view that power existed before.

Mr. Elston: Are you saying the issue there is whether they have the power to stop a person who has just driven through a stop sign or a person who is speeding? Is that a concern to you?

Mr. Segal: It is not a concern, because of other sections of the Highway Traffic Act.

Mr. Elston: At what sections of the code are you aiming the proposed section 189a?

Mr. Segal: One example would be the very section that was discussed in Dedman, the power to inspect a licence, which the Legislature long recognized was the right of a policeman; that is, everyone who is driving, it being a privilege, should be in a

position to show proof he has satisfied the conditions precedent for driving, in the first place, and continuing to drive, that he has a valid operator's licence. A second example might be insurance. I haven't thought of all the appropriate examples.

Mr. Elston: I take it these are matters you raised when you were on these cases. Am I right that you argued these cases?

Mr. Segal: That is correct.

Mr. Elston: You are also the draftsman of the legislation?

Mr. Segal: I had some influence.

Mr. Elston: To a large extent. I notice you have been making some input here. So this is designed to deal with the difficulties you faced in front of the two courts. Is that correct?

Mr. Segal: No. I don't like that phraseology, with respect. These amendments are not designed to overcome any problems I have or might have had. They arise out of the judgements that canvassed a number of issues in the drinking and driving area. Some of the questions raised by these amendments predate RIDE and have been considered by several ministries internally for some time. But it is fair to say this decision precipitated an in-depth course of study.

Mr. Elston: Maybe then I should address my question to you. As Mr. Thomas has put it several times, we are changing into a new area of law here by setting out a very broad section indeed. Why would it not be better if we limited this section to dealing with the Dedman decision? That is generally how we react to court decisions that the Legislature thinks need to be reworked. I am asking why are we going so much farther now in this particular situation than is really called for. I am not even sure, as Mr. Thomas pointed out, we have even been invited to go that route by the court.

I think I agree with his interpretation that there was an area left open saying there was jurisdiction. I am not convinced we were invited to do this at all. But perhaps you could just deal with my comment as to making it a very specific section to deal with the concerns in there, rather than going so much farther. I don't mean to get away from Mr. Thomas, but these are interesting--

Mr. Segal: The three matters that come to mind are that it was believed the police had the power to stop generally via the licence section. That matter, in the minds of some, is in some doubt as a result of Dedman. Coupled with that, some have a fear that if we restrict the power to stop to a specific program such as RIDE or random drinking and driving checks, the question will be raised, against the background of Dedman, what does that do for what the police perceived as their power to stop generally? If they are given a specific power, does that affect the power in circumstances not described?

Mr. Roy: I don't like to interrupt, but this is the second time you have mentioned that, and I have great difficulty

following you on that. First of all, your statement in the bill states clearly that section 2 apparently was something to do with Regina versus Dedman. If you are naïve enough to read what is in legislation and say it seems that the evil we are trying to correct is Regina versus Dedman, okay. That was the RIDE program. It seems to us everybody was under the impression that was the evil we were trying to correct.

9:40 p.m.

You have gone further than that. You have given wholesale power to the police, as has been mentioned by my colleague Mr. Renwick and by witnesses here. It has been mentioned by some of us here about the great concern that we have with no discretion, no reasonable grounds, no reasonable suspicion for the police to stop anybody, any time, anywhere, for any reason. You have gone that far. Can you imagine what would happen if you enacted legislation on that basis all the time? It is as if when you are trying to cure an evil, for instance, a prostitute who is doing something wrong, you pass wide-sweeping legislation taking everybody off the streets. That is not the way to go about legislation.

I should not be arguing with you, I should be arguing with the Attorney General, I understand, but I have great difficulty following your argument that if you do not go whole hog the other way people will be saying well, what about the power the police may have had to stop someone to look at his driver's licence, to look at his insurance, or to check the safety of his car. Is that what you are saying?

Mr. Segal: With respect to my comment of being naïve, and with great respect sir, I am not the first person to make the connection regarding the general power to stop and RIDE. The Court of Appeal did that; in the same breath they discussed the two. That is all I can say. It is not an original thought. The Court of Appeal looked at the English legislation and said, "Here, look at that, there is a general power to stop." They looked at the Alberta legislation and the legislation of provinces in the same breath as discussing this problem.

I didn't come up with this. It is the Court of Appeal of Ontario that has made the connection regarding the power to stop.

Mr. Roy: With respect, that really did not decide that point as a matter of an issue. It said that the individual stopped voluntarily so that the real issue is what would happen if he would not stop, the consequences. Justice Maloney said to you clearly that he did not think the police had the power to stop you. Aside from that, getting away from whether you had it or not, I just do not understand why you would not correct that evil, give yourself the power to stop to enforce your RIDE program, but limit it to that, and not give yourself carte blanche for the police to do anything, any time, for any reason. That is what I have difficulty with.

Mr. Segal: All I can say is that the deficiency in the Highway Traffic Act has been noted by our Court of Appeal. It was that court that brought to our attention this legislative technique



of a general power to stop, which power to stop has been in existence in England since the advent of automobiles without any great difficulties, and in other provinces.

It is a question of policy, but it is all premised on the fact that when you are driving a car, whether one accepts it or not, you are in a different category than if you are a pedestrian. If one is a pedestrian, this kind of legislation flies against the history of our common law, but in so far as driving is concerned, which is a privilege, there is a different tradition as embodied in the English legislation which is probably the oldest in the Commonwealth. Several other provinces have had this.

It is, of course, possible, there is no question that it is possible, to restrict it to a RIDE-type program. In some sense, that is a policy decision. I would just indicate one small concern--it is not the only answer that I have given--is that if one legitimizes only the RIDE business, the question will arise in the minds of the public as to what that does for the general power to stop, which the police, in at least my own judgement, should have.

What happens when a citizen runs across a police officer who, in good faith, and not acting arbitrarily, sees a tail light out, or wishes to inspect a person's licence, which the Legislature has recognized--

Mr. Roy: He has got a right to do that and that is spelled out in the Highway Traffic Act now.

I am confused about the fact that the citizenry may have an idea about what their rights are, because if you ask the citizenry I would think they would think that if they were stopped most of them would feel they are obliged to to give a statement, which is not the law, but we are not going to change the law accordingly.

Surely when you are bringing forward legislation you try to bring it in such a way that you specifically deal with the problem, the evil that you are trying to correct. In this case, whether willingly or otherwise, I am suggesting to you, I am suggesting to the Deputy Attorney General, and I do not want to be unduly harsh on the non-elected individuals here, it darn near appears as though you tried to slip us a fast one here. We were thinking you were trying to correct the evil or at least the problem that has been spelled out in Dedman.

It turns out that you are getting not only that problem corrected but you are giving a carte blanche to do pretty near anything police want to do as far as stopping an individual on the road. I am very concerned about that and I think my colleagues are very concerned about that, especially when you look at the penalties you have set out here.

Mr. Williams: Mr. Chairman, could we extend the courtesy to the witness and hear him out, as has been suggested by Mr. Roy and others, and then when he gets through we can debate the bill clause by clause?

Mr. Thomas: I appreciate what Mr. Segal has said, but I am not aware that in Alberta or in England there is a penalty attached. Mr. Segal, there might be the power to stop in Alberta and in England, but I am not aware that such a penalty flows from the failure to stop in those jurisdictions.

My point simply was, and I hope I have made it, that it is one thing to clarify the right to stop, in other words, the citizen is required to produce his driver's licence upon demand. If that section said the police officer has the right to stop the citizen, that solves the matter right there. To me, that is all you would need. I do not think you need to put something like this in, which is far broader than just clarifying the question.

We all know the officer has the right to require the licence, but the thing is he has to get him to stop to do it, so you have to put in a provision that he is entitled to stop the person to ask him to produce it, to enforce the provisions of the Highway Traffic Act. In other words, without it, what is the point of having section 14 in there which makes a person ideally at law produce his driver's licence? Surely it is implicit that the police officer cannot fly after him, cannot jump in the car, it is implicit that he must be able to ask him somehow.

He cannot just stop him at a traffic light and say "Hey." Surely there is nothing too offensive about saying you could ask him to stop to produce it, but to do something like this is far beyond that. If that is all you are worrying about, I think all you should be concerned about, with respect, is the question of enforcing the provisions of the act which we already have. You simply say that the police officer has the right to stop individuals to enforce the provisions of the Highway Traffic Act and the general duties that he has.

I am not aware that England or Alberta have anything like in sections 2 and 3. I would be very surprised to find out if that is the case.

Mr. Chairman: Mr. Elston, I am a little bit mixed up as to whether you were finished when you gave up the floor to Mr. Roy, or whether he was taking a supplementary on you.

Mr. Elston: It was a supplementary. I just have one thing that I want to tell the committee now and that is a situation which was related to me by a personal friend who is in the law business. He represented an individual from a city not far from here who got involved in a police chase. He was the person who was pursued. The set of circumstances surrounding that were laid many weeks before the actual event occurred.

9:50 p.m.

In the area in which he lives there is a rivalry between individuals and there were times when individuals were appearing in unmarked cars with red flashing lights, getting people to pull over to the side of the road and then beating the living daylights out of the occupant after they got him stopped. These were not police officers, they were not anything of the sort.

My friend was in a situation where his client was stopped at a stop light. A car pulled up beside him and flashed a light. His first reaction, seeing that it was an unmarked car, was to flee because of this very serious set of circumstances that had transpired beforehand. He went through a red light which was enough to stop the person. He proceeded to go through two more stops, one stop light and a stop sign or whatever. In any event, it turned out that the car that had pulled up beside him, flashed the light and was trying to show that he had a badge was in effect two police officers in an unmarked police car.

Under our situation here, that client would obviously be wilfully fleeing from a police officer and one who would be readily identifiable as a police officer. There is no discretion in the court to award that person anything other than a three-year suspension of his licence.

Mr. Hilton: Pardon me, under those circumstances it would not be readily identifiable.

Mr. Elston: As soon as the guy comes up and tries to show his badge and he flashes a red light.

Mr. Hilton: He would not be convicted of the offence.

Mr. Elston: I would say he would.

Mr. Hilton: Were the police in uniform?

Mr. Elston: They were not in uniform.

Mr. Thomas: The point I made earlier--and it is only my view, I have thought about it considerably--is that readily identifiable is in an objective view by the court. Were those officers there to deceive?

Mr. Elston: These people were not.

Mr. Thomas: Not whether he, because of real or imaginary problems, did not see the officers or did not bother to look but just got frightened and took off. When all those circumstances were put before a court, I agree with the member of the committee, there would not be any defence. Those two officers were readily identifiable. They were there, they were in an unmarked car and there would be no discretion. It would be a three-year suspension.

Mr. Elston: The question I suppose would be what more could those officers be expected to do to identify themselves in the situation they were involved in. I just relate this because it is a real experience and there are probably situations which we have never thought about in that light. I want to leave the committee members with that set of facts to apply this particular piece of legislation and consider the very good suggestion made by my friend Mr. Piché on top of all the other submissions that have been made.

Mr. Hilton: If when he was going through one of those red



lights there had been an accident and somebody had been killed, what could have been the response of the authorities, the police department or the government if challenged in the House? There isn't one.

Mr. Roy: This is a response, is it?

Mr. Hilton: We are trying to, yes.

Mr. Elston: The thing is, if they had been involved in an accident it would have been a three-year suspension of the licence under this piece of legislation. I presume they would have reacted the same way that these people did and they would have been charged with dangerous driving and a number of other offences, which is exactly what happened under the provisions. They were given a trial, they were tried on the facts.

Mr. Hilton: Let me try it on these facts.

Mr. Elston: Mr. Thomas has put in front of us the very serious concern that we have raised time and again, which is that in effect this does not give us a defence at all.

Mr. Hilton: When I advised the committee that we would be happy to accept the insertion--

Mr. Elston: Of wilfully--

Mr. Hilton: Of wilfully.

Mr. Elston: That means wilfully to continue the chase.

Mr. Hilton: He has to wilfully continue. It has to be shown that it was for the purpose of avoiding the police and it has to be shown a police officer gave pursuit. Those are the active ingredients that have to be shown.

Mr. Elston: If I may, my set of facts comprise all of those very components. In effect, there are police officers who are pursuing, there is a fellow in a car who made the deliberate decision to evade that car even though they were trying to flash a light to stop him and they were flashing badges and they continued the pursuit. I cannot really come to making my mind up where they would argue that he did not wilfully try to continue the chase. I admit this is a special set of circumstances.

Mr. Hilton: Well, the argument on that would be "readily identifiable."

Mr. Elston: Then you go back to the first section altogether. What the police will have to argue, I presume, is that they cannot do anything more to identify themselves than to try to show badges and to flash a red light. That may be the same decision.

Mr. Williams: How can you say they were readily identifiable? It was late at night; they did not have any uniforms on you said; and they were how far away from the other car and showing an object that big in their hand?

Mr. Elston: The car pulled right up beside these people at a stop light.

Mr. Williams: I am saying it would be pretty hard to identify that person as being a police officer.

Mr. Hilton: We have introduced the mens rea with the word "wilfully." It would have to be wilfully continued to avoid police. So he would have to believe they were police. And he probably would not be convicted under those circumstances.

Mr. Roy: You know what is going to happen is that in an attempt to be very tough with these things and giving no discretion to the court, you are going to force the court--it is the court that has to be satisfied under the subsection. I suggest when the punishment is as tough as it is here with no discretion, it is going to take a terrible chase before the courts enforce subsection 3.

If it is a situation where there had been some discretion in the court to suspend for six months or one year, it is just not going to bother enforcing it because the punishment is going to be too severe. I bet that is going to happen.

Mr. Hilton: It was one of the arguments that was brought up with the suggestion that there be mandatory jail sentences--the observation you have just made.

Mr. Roy: This is going to be the same.

Mr. Chairman: Mr. Roy, have you completed yours as supplementary to Mr. Elston, or do you have other questions?

Mr. Roy: There are a number of them but I have concluded. There are a number of others that I want to ask Mr. Thomas about. Perhaps some of these are not fair.

I do not want to get into the question of mens rea or being arbitrary; I think we have dealt with the penalty sufficiently. It would appear that we are going to have some difficulty convincing the government that there is a serious problem with that section.

I want to ask Mr. Thomas if he sees any conflict in the provisions of section 2, the ones which we are all so concerned about, and the provisions of the charter which will come into force early next year?

Mr. Thomas: There could be conflict and there will be conflict with legislation already in existence in the charter as well. There may very well be conflict between the two.

I do not know whether a possible conflict between the provincial legislation and the charter of rights is necessarily a reason to exclude it if there is no other valid reason for so doing. There is a possible conflict, that is for certain. That is why I suggested before that if you do tie it into enforcing the provisions of the act, you do not get yourself into anywhere near

the trouble you will run into with the charter of rights. You are giving the officer all the power he needs and you are not creating a section like this that really does not have any reason to be in the act.

Mr. Roy: Would you be concerned about a section which, for instance, read that the police had the power to stop a vehicle to enforce the provisions of the Highway Traffic Act or the Criminal Code?

Mr. Thomas: I would not be concerned with that because the officer would have to have some reason to do so. If the officer had some reason to suspect that someone did not have a driver's licence, he could stop him.

10 p.m.

Mr. Roy: Mr. Deputy, why wouldn't you have a section, if that is what you are trying to do--and I have heard Mr. Segal's comments--why wouldn't you just have a section which says simply the police have the power to stop a vehicle to enforce the provisions of the Highway Traffic Act or the Criminal Code or any other statute, or something along that line? Why wouldn't you have something?

Mr. Hilton: I have no reason to know why you might be wanting to stop somebody. It might be a matter of personal safety, a washed out bridge. These are just things I grasp at in answer to your question, but as Mr. Renwick has pointed out several times to the committee, in his canvass the accepted understanding of the people is that the police do have the power to stop.

Mr. Roy: I would be giving you the power with this if I said--

Mr. Hilton: I know you would, but this is no extension beyond that which the public now believes the police have.

Mr. Conway: I find that outrageously offensive. I just want to interject at this point. That makes me madder than anything else I have heard in here.

If I am going to be expected as a legislator to participate in an enactment on that basis, I just feel like walking out of here in complete disgust. It disappoints me to hear members of the bar, distinguished members of the bar, say that because my mind just goes off to a host of other possibilities that have been alluded to here on the basis that, my God, my constituents and myself--there are a host of things that I think are the entitlement of the law officers of the crown or the police force. Just because the public at large think they have that power is for me absolutely no reason, in the absence of some strong compelling evidence to do something about a social problem or a general concern, to legislate in that direction.

I just find that--and I heard it from a number of sources here tonight and I just want to sit in my place and say I don't want to hear it again because I find it offensive, particularly



when it comes from members of the bar who I, quite frankly, in my lay position, would like to think know better. Sorry.

Mr. Thomas: I think there might have been a time a few years ago when people were very concerned about freedom of movement that they wouldn't respond well to being stopped to produce their driver's licence, but it may be in today's climate people, understanding the difficulties of enforcing the provisions with respect to stolen cars, will put up with that inconvenience in the interests of all of us.

That may be the case and I am suggesting that as far as you should go is tie it in to those provisions of the act that are already there. Where there is a positive duty of a citizen to produce his driver's licence, surely you can't complain if he is stopped and asked to produce it. That is what you really want to do, but this section is something far beyond that.

Mr. Roy: I really can't see, Mr. Deputy, why you could not accept our suggestion that you simply narrow the section down to the enforcement of certain penal statutes like the Highway Traffic Act or the Criminal Code. Why do you leave it wide open like this? That is the difficulty I have.

I am offended by the statement about the perception the public have about what the police can do, because as I gave as an example, if you ask most people, "If you are stopped, are you obliged to give a statement?" I would think 90 per cent would probably say yes--or most people think they are entitled to the right to counsel under some statute--

Mr. Hilton: All I can say is that we have heard Mr. Thomas's submission. We have heard the remarks of the members and we will consider them at least overnight, for the meeting to be held tomorrow.

Mr. Roy: You know this borders on close to irresponsibility to bring in legislation as important and as wide-sweeping as this on such short notice and to want to ram it through with so little discussion.

My next point with Mr. Thomas was an issue you raised which again is of great concern. That is your subsection 3 of section 1 where you state that an individual under section 234.1 or 235 of the Criminal Code may well have a reasonable excuse to refuse for a variety of reasons.

For instance, under section 235 the police must have reasonable and probable grounds to demand a breath sample, and his defence may be that the police don't have reasonable and probable grounds, but nevertheless under this section he may lose his licence and be completely innocent. Isn't that right, Mr. Deputy?

Mr. Hilton: I wouldn't say so. He can only be asked to blow under the sections as they are tied in in the requests under 234.1 or 235.1 and when they have, they can only request on reasonable and probable grounds.

Mr. Roy: With respect, your section 234 as I read it--and the only reason I know it is because I had occasion to argue it once--section 234 is the blowing into--not the Borkenstein, the roadside isn't it? For the roadside all you need is--

Mr. Segal: Reasonable suspicion.

Mr. Roy: Yes. The other one, section 235, has higher standards, "reasonable and probable grounds."

Mr. Hilton: There have to be reasonable grounds in both, that is all I am saying.

Mr. Roy: Okay. The point I am making to you is this. You state here that if a person is charged under section 235 the fact that he is charged doesn't mean to say he is guilty. He is presumed innocent. "Any procedure is taken pending the laying of such charge to assure the person's attendance in court on the charge, a police officer may request the person to surrender his driver's licence."

I am saying to you the police have a discretion to take away this man's licence and yet he is presumed innocent and may turn out in fact to be innocent but he has been punished and he has had his licence taken away. That is the point Mr. Thomas was making.

Mr. Hilton: His licence is taken away; let's look at the alternatives. Mr. Thomas talked of alternatives. He is asked to give up his driving for 12 hours--if it is 9 o'clock at night until 9 o'clock the next morning. He can go then and get his licence back. He, as a potentially dangerous person, is removed from the highway and he himself is protected.

In addition to that, he has only to go and get his licence back, usually at a police detachment somewhere approximate to where he is stopped, which is presumably approximate to where he has been or is going or lives; it is not miles away. He is not obliged to take the time off to go to court. He is not obliged to the severe penalties of going to court with all that involved--the expense, if he wants to do it, of hiring a lawyer.

The three of you are sitting there grinning. I wouldn't be grinning if I was there--

Mr. Roy: My God, you couldn't invent a better factual situation, but carry on.

Mr. Hilton: The fact of the matter is that this helps in many instances and it is our understanding in those provinces where it has happened it is widely accepted by the public and as a matter of fact is enjoyed by the public. They feel that they are protected rather than being arrested, taken to the police station, booked, then have to go to court and receive the penalties that are there. There are no penalties here. There is no arrest. There is no imprisonment. There is no record. There is no possible second offence with a mandatory jail sentence.

Mr. Roy: I get all of that, Mr. Deputy. That's great.

Mr. Williams: A point of order. Mr. Chairman, with respect, Mr. Thomas is here making a presentation to the committee. Mr. Roy has brought that to our attention on more than several occasions this evening and has interrupted when members have asked questions and has said, "Let Mr. Thomas complete his submission." For the past half hour we have had Mr. Roy interrogating the staff.

There has been a debate going on which is interesting. I think at the right time, we have got to get down to this nitty-gritty. In the meantime, we are leaving the witness out in the cold and I think he should be given the opportunity to complete his submission. I don't think we want him to have to come back tomorrow.

Can't we let him conclude, as you suggested earlier, and then you can start interrogating the staff?

Mr. Roy: No, No. But you see, Mr. Williams, if I can explain--

Mr. Williams: Each time you say you are going to ask him a question you wind up interrogating the staff.

Mr. Roy: Mr. Thomas has made a statement. I asked the deputy, while Mr. Thomas is here, to respond to it and we are trying to get this exchange.

10:10 p.m.

Mr. Williams: You are not even letting him respond. I thought you were asking him questions but you kept on asking the deputy the questions.

Mr. Roy: Mr. Thomas made some submissions. I am asking the deputy to respond. I was going to ask the deputy just to carry on. We are nearly finished this point. It is a very important issue, and I would like to get the deputy's attitude towards this issue while Mr. Thomas is here.

Mr. Williams: Can we have the consensus of the committee as to whether we should let Mr. Thomas conclude his submission or not, Mr. Chairman?

Mr. Chairman: Mr. Thomas has finished his submission, Mr. Williams, and I am going to rule against you. That is not a point of order. Mr. Roy can continue to work this both ways because he is under the umbrella of asking Mr. Thomas questions.

Mr. Roy: Mr. Chairman, if I may say this to the deputy, it may be that the individual who suffers a demand under section 234, and knows that he has been drinking and blows and it turns out that he gets somewhere around 0.05 and they say, "Okay, your licence for 12 hours." You expect that he will be eternally grateful rather than head for the station and maybe get higher. I can understand all that. I think that is what you are trying to tell us.

I am giving you another situation. The individual under



subsection 3 refuses to blow in the machine on reasonable and probable grounds. He says he is innocent, Mr. Deputy. At that point he is innocent in his own mind, and yet the police have the power to take away his licence. That's a point that Mr. Thomas was making. He is not going to say that he is eternally grateful because he is going to have to hire a lawyer at some later time to go to court and defend himself under section 235, and probably be acquitted. But in the meantime he will have lost his licence, he will have spent all the money to get his car back and everything else. That is the point that Mr. Thomas is trying to make.

Mr. Hilton: With respect, the right exists to ask a person to blow under section 234 or section 235 with the penalties of the code. All that is really saying is that penalty of refusing to blow is not altered by the introduction of this legislation.

If this legislation didn't exist at all, and you were stopped and asked to blow and you refused, then you can be charged with refusing to blow. All I am saying is that doesn't take it away because of this.

Mr. Roy: Frankly it does, because you are putting an additional penalty on him for having done something for which he may be proved at a later time to be completely innocent. That is the point Mr. Thomas is--

Mr. Hilton: Completely innocent of refusing to blow?

Mr. Roy: Yes. He may have a reasonable justification as the code says. It is not the point--

Mr. Hilton: So the penalty you say is the removal of his licence for 12 hours?

Mr. Roy: And the towing of his car. He may be out in the middle of the country--taxi, the whole bit.

Mr. Hilton: That would happen even if he refused to blow at all.

Mr. Thomas: I think the point I was trying to make is that if you look at it in this form, yes he could be charged with refusing to blow; and he may have a defence, and he is entitled to go to court and have that tested. But prior to that there has been another hearing, so to speak, on the roadside and his licence is gone because he has refused to comply with the demand, even though subsequently it may very well later be established he might have a valid defence if he had a reasonable excuse or if the officer didn't have reasonable and probable grounds.

The licence is gone for 12 hours. All I am saying is whether it is 12 minutes, 12 hours, 12 days--this legislation says 12 hours--because the citizen notwithstanding he might have had a reasonable excuse or reasonable and probable grounds did not exist, the police officer still has the power to take away his licence.

Mr. Hilton: I think there is a question of balance of the safety of the public on our highways--

Mr. Thomas: That is what the committee has to decide.

Mr. Roy: And punishing the innocent.

Mr. Hilton: Maybe.

Mr. Roy: Could I ask you a further question, Mr. Thomas? I think there is a provision--I haven't found it--

Mr. Hilton: You must remember that there was reasonable or probable cause or he would not have been asked to blow.

Mr. Thomas: That sort of begs the question. Maybe in 90 per cent of the cases or more that might be absolutely correct, but the question is that the court might later find that the bloodshot eyes were not due to alcohol, that the odour of alcohol was coming from his clothes--

Mr. Hilton: You and I have both gone through all these events before.

Mr. Thomas: I know you have, sir. I am only saying it may very well be that the reasonable grounds didn't exist, in fact, as a court may very well find. It would not be very often, but it may very well find that that didn't exist and that there has been that deprivation of his licence because it has been for negative conduct: he has not done something.

Mr. Hilton: If he has nothing to fear, then he will blow.

Mr. Thomas: I suppose that's what's behind the legislation itself. But my point simply is that, as the Legislature has to decide, prior to a citizen saying "I have a reasonable excuse, I am going to take my chances in court, I am not going to comply," there is that hearing where his licence--

Mr. Roy: The Criminal Code allows them to do that. If there was no provision in the Criminal Code to allow one to have a reasonable excuse, Mr. Deputy, then you would say, "Well, look fellow, you have got to blow." The code says if you have a reasonable excuse you don't have to blow and that is what this individual does here. He says, "I have got a reasonable excuse."

Mr. Thomas: And that's what my point is. I think it flies right in the face of the Criminal Code. You may have to talk to the legislators in Ottawa. The code recognizes it is possible someone could have a reasonable excuse for not blowing. But you are saying notwithstanding that that could exist and could be valid, the person could be innocent, that the presumption of innocence is removed for 12 hours because, although all we've got is a visual thing and he did not blow, we are assuming he is guilty anyway and we are taking it away.

Mr. Williams: Mr. Chairman, may I interrupt at this time to determine what procedures we should be following now, given that we are quarter past the hour. I think we should determine at what time we proceed to a clause-by-clause discussion on this bill. We

have very little time available to us. Perhaps you could indicate what time would be available to us after this evening for the purpose of dealing with this bill on a clause-by-clause basis.

Mr. Mitchell: While on that point of order, Mr. Chairman, I am not aware of whether this bill was in this committee with any time limit on it. I am led to believe it wasn't, but we have scheduled for tomorrow the Correctional Services estimates and I think we need to establish when this particular debate is going to continue, and if we are going to ask for an additional sitting tomorrow evening or whether we are going to deal with it in the normal time on Thursday and Friday. But I think we have to establish some time in which we are going to wrap this up.

I think one shouldn't lose sight of the fact whether we are supportive of the bill or against the bill, the fact of the matter is that our deliberations must be completed in time for it to be processed through the House.

Mr. Williams: I would suggest the only time we have really left to us is tomorrow afternoon.

Mr. Chairman: We have Thursday. It could be finished Thursday and reported Friday.

Mr. Renwick: We would have to get leave of the House. We could automatically sit Thursday afternoon and Friday morning.

Mr. Chairman: Yes, and we would have perhaps an hour plus tomorrow afternoon, although we would have to have special permission of the House--we have blanket permission for Wednesday afternoon--not just for the Correctional Services estimates.

Mr. Mitchell: What is the time allocated for Correctional Services, Mr. Chairman?

Mr. Chairman: It is to end with the minister's response that starts at 4:15 p.m. If he has half an hour less, we would have an hour plus at the end of the afternoon to come back on this if we wished.

Mr. Mitchell: Just a minute. That leaves me somewhat puzzled. We are starting here at nine o'clock tomorrow.

Mr. Chairman: Yes. From nine until 4:30 p.m. or 4:45.

Mr. Mitchell: What is occurring at nine o'clock? Is it not the minister's statement at nine o'clock?

Mr. Chairman: It is set out on that timetable there from nine to 4:15 p.m. blow by blow.

Mr. Mitchell: That's all I wanted, the time frame, and it is nine to 4:15. So you are saying, we have that period from 4:15 to the end of the--

Mr. Chairman: We have the minister start his response, and give him 15 to 20 minutes to respond, or half an hour.



Mr. Mitchell: But we could come back to this bill then on Wednesday?

10:20 p.m.

Mr. Chairman: Yes, and Thursday. How much longer do you expect you will be with your questioning?

Mr. Roy: Five minutes, maybe less.

Mr. Chairman: Mr. Renwick can you complete your questioning of Mr. Thomas this evening?

Mr. Renwick: I have no further questions of Mr. Thomas.

Mr. Chairman: Thank you.

Mr. Mitchell: Then what has been resolved, Mr. Chairman?

Mr. Chairman: Then we would have Dr. Lucas remaining only, perhaps tomorrow.

Mr. Mitchell: So can we not go into clause by clause Thursday? Is there any problem with that?

Mr. Elston: I have a question concerning the people from the Addiction Research Foundation. Are those people to be here tomorrow?

Mr. Chairman: They were only going to be available if we asked them to be here as technicians, but I understand they advised the clerk that Dr. Lucas was at least as qualified to give the technical advice as they were.

Clerk of the Committee: They also indicated they could be here on five minutes' notice, approximately.

Mr. Williams: Do you think there would be agreement of the committee that we conclude during witnesses tomorrow with what time is left available to us and proceed to clause by clause on Thursday as we--

Mr. Roy: Take it as it comes.

Mr. Chairman: You are asking for consensus and you are saying that is not the consensus.

Mr. Roy: No, no. All I am saying is, let's proceed. We will hear the witnesses and when we finish hearing the witnesses we will proceed clause by clause. Why should we--

Mr. Mitchell: Albert, let's face this straight on. When we were dealing with previous estimates and so on, and operating in the committee, we accepted a motion that was put forward by Mr. Breithaupt and we accepted that time frame as allocated, I think, without much discussion. All we are trying to do is establish a time here so that we know this bill can get back in the House. I

don't think that is asking anything unfair. So the question that's been put is, can we wind up listening to the witnesses tomorrow afternoon, assuming that we get into it at 4:15 and that as a result we will go clause by clause on Thursday.

Mr. Chairman: Mr. Mitchell, the chair is going to rule. It is pretty obvious, without going further, we cannot get any such consensus. A consensus needs the great majority, and I see great resistance to it on my left.

Mr. Williams: Mr. Chairman, given the very short time frame that we have available to us, I would put a motion to the effect that we would continue to hear witnesses through tomorrow afternoon and what time is available to us after dealing with the estimates of the Ministry of Correctional Services and proceed forthwith to deal with the bill on a clause-by-clause basis at the commencement of the committee hearings following the routine proceedings on Thursday night.

Mr. Mitchell: Can we call the question on that then, Mr. Chairman, so that Mr. Roy can finish?

Mr. Roy: I have a long submission to make on that.

Mr. Elston: Could we hold that then? Let's deal with--

Mr. Chairman: No. I am sorry, we have a motion on the floor.

Mr. Piché: What is the motion then, Mr. Chairman?

Mr. Chairman: The motion is that we complete our witnesses Wednesday with the time that is available to us, and this will, of course, be subject to what happens on Corrections, but I guess the chair will try to get the minister, Mr. Leluk, to adhere to the agreed upon schedule; and that we commence clause by clause on Thursday, presumably at our regular time.

Mr. Conway: I would just like to make a few observations about the subject. I want to say that I appreciate the member for Carleton (Mr. Mitchell) directing our attention to arrangements that were entered into in this committee earlier. I am not a member of the committee, and this is the first opportunity I have had to participate in the justice committee proceedings in this Parliament. I can speak, however, from experience in other committees that the kind of arrangement that he spoke of is not uncommon. It seems to be routinely entered into on a variety of subjects by a number of honourable members.

However, in this case I think there are a couple of factors which present themselves as being somewhat more pressing. I happen to think this is an important bill.

Mr. Mitchell: I grant you that.

Mr. Conway: Quite frankly, the more I sit here, it is a more important bill than I imagined when I walked into this debate a couple of days ago when my interest was principally, and probably

a lot of it misplaced, in the first section. The more I hear from witnesses and from learned counsel, the more angry I get. That is my first point. Bill 178 is an important bill.

It is unfortunate that we find ourselves in a time constraint. For an important bill to be placed before the House on November 27, probably 26 days or so before the expected date of adjournment--let me be more specific than that, 21 days, three weeks--by the Solicitor General on behalf of the government is, I dare to suggest, largely responsible for the unhappy situation in which we now find ourselves, complained of by some members, between a rock and a hard place.

I find the larger share of the responsibility for that time constraint must be laid at the doorstep of the Solicitor General in this respect. Quite frankly, I did not expect it would take as long as it has to proceed with the testimony today. I have found these two witnesses stimulating and helpful. I have found the interventions and the suggestions of all honourable members very useful--

Mr. Piché: On a point of order, Mr. Chairman: It is obvious that Mr. Conway is running the clock out until 10:30.

Interjections.

Mr. Piché: You can do that if you want, but my point of order is, will Mr. Thomas be back? Obviously there are five minutes more of questions from Mr. Roy. Mr. Thomas has concluded, but Mr. Roy had some questions. There is no doubt that Mr. Conway is running out the clock, and I am just wondering if Mr. Thomas will be back tomorrow.

Mr. Williams: He said he had finished his submission.

Mr. Piché: Yes, but there are some questions to Mr. Thomas and Mr. Conway is not helping anybody else on the committee to ask any further questions. I have only one question of Mr. Thomas and I am being denied that by the tactics of Mr. Conway.

Mr. Conway: I must say, Mr. Chairman, that I always enjoy the reflections of my friend the member for Cochrane North, but at the risk of being mildly provocative I must say it was not my motion to put the committee on a different course of debate as opposed to the one we were on, which was discussing in a rather useful and a general way the comments of the current witness. It was not my suggestion that the current timetabling motion be put and debated now. That is something that my good friend the member for Cochrane North is going to have to discuss privately over tea and biscuits at 10:30 with my colleague the member for Oriole.

I want to say only that it is a very important debate. It excites in me a number of questions. I want to say to the member for Cochrane North, and as a new member I will not push the point about the imputation of motives to suggest that I--

Mr. Chairman: Would you speak to the motion, please?



Mr. Conway: I will be glad to do that, but I want to say to you, Mr. Chairman, a charge was made that I was endeavouring to speak to this motion--

Mr. Chairman: The chair has ruled that out of order.

Mr. Conway: But the charge was put that I was contributing to the debate on this motion in order to run out the clock. That has never been my style. I could not imagine how that might be done.

Interjections.

Mr. Conway: I want to say only that the motion to restrict to tomorrow the time of this committee is unacceptable to me for a variety of reasons.

Tomorrow is a normal sitting day of the House, as I am told. Given the rather unpredictable nature of question period these days, the rather endless points of order and points of privilege that are often entered into by honourable members on all sides following routine proceedings, God knows when we might be in a position to get to this room to begin the other business that has to be attended to prior to the committee coming to the continuation of this particular matter. So it is really a request for me to buy a pig in a poke. I cannot share in the clairvoyant good humour of other members who can imagine some 24 hours--

Mr. Williams: On a point of order, Mr. Chairman: It being 10:30 of the clock I move adjournment.

The committee adjourned at 10:31 p.m.

Lacking no. 70, 1981





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 178, HIGHWAY TRAFFIC AMENDMENT ACT

WEDNESDAY, DECEMBER 16, 1981

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Piché, R. L. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Swart, M. (Welland-Thorold NDP)  
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

Also taking part:

Conway, S. G. (Renfrew North L)  
McMurtry, Hon. R. R.; Attorney General and Solicitor General  
(Eglinton PC)  
Roy, A. J. (Ottawa East L)  
Smith, S. L. (Hamilton West L)

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 16, 1981

The committee met at 5:27 p.m. in room No. 228.

HIGHWAY TRAFFIC AMENDMENT ACT  
(continued)

Consideration of Bill 178, An Act to amend the Highway Traffic Act.

Mr. Chairman: Gentlemen, we are waiting for the minister, for the reason that, while Mr. Conway had the floor when we broke yesterday, I believe the minister has a bit of a statement that may assist or make things a little smoother. Before we start off on a tangent, it would be better to hear from him first.

Mr. Piché: Will we have a chance to say anything with Mr. Conway having the floor? I do not expect that anyone is going to have anything to say until six o'clock.

Mr. Conway: I just want to say, Mr. Chairman, that I can certainly conclude my remarks on the subject that we were addressing here last evening.

Mr. Chairman: We are speaking of Mr. Williams's motion that all the witnesses be completed today and the clause-by-clause be commenced by tomorrow. That is the motion.

Mr. Conway: I have only to say that I do not in any way wish to disadvantage, discourage or disrupt my expansive friend the member for Cochrane North (Mr. Piché).

Mr. Chairman: We have reconvened, have we not? Carry on, Mr. Conway.

Mr. Elston: We ought to, in light of the absence of our friends--it does not matter to me.

Mr. Chairman: No. I suspect we should carry on.

Mr. Conway: The bill before us is one that is more important even than I had imagined when I came here to listen to the witnesses. I was just concerned about the constraints spoken of in the motion of the member for Oriole (Mr. Williams). I would hope that we could proceed in an orderly fashion to hear out any witness who wishes to address us on this important legislation, keeping in mind that it is only a three-week period from the time of its introduction to the actual expected termination of the fall session.

If there is a time constraint, quite frankly, as I said yesterday, it is in my view as much or more the responsibility of the Solicitor General (Mr. McMurtry). I would in no way feel disposed to support the resolution of the member for Oriole on the grounds that this is an important bill. It ought to be carefully



considered. I am delighted to hear in the dark corners of the building today that certain arrangements to--I use your phrase, Mr. Chairman--smooth out any difficulties are to be forthcoming.

I encourage the Solicitor General to do that in good speed. I am sure that, if he understands the mood of compromise and consensus as well as our view about the important principle that is at stake here, there is no need to be concerned about time constraints at all. The mood of the season ought to prevail and we can dispose of the matter in a very democratic fashion.

Mr. Chairman: Are we ready for the question as to finishing with witnesses today? We have only one witness left, Mr. Lucas, who is here.

Mr. Roy: If that motion will not be withdrawn, I would hope that the member for Oriole would withdraw the motion to allow a statement by the Solicitor General, and if he did that, then we may be in a position to reconsider the motion after we have heard a statement from the Solicitor General. Unless we get that sort of indication, I am quite prepared to speak further on this motion.

Mr. Chairman: Mr. Williams, reserving the right to replace the motion immediately after hearing from the Solicitor General, would you withdraw that motion?

Mr. Williams: If it is a matter that will accommodate the Solicitor General, there is no problem.

Mr. Elston: What about the committee?

Mr. Williams: I do not see the need to withdraw the motion while the Solicitor General makes a statement.

5:30 p.m.

Mr. Chairman: Mr. Williams, Mr. Roy has said that--I will paraphrase him--he is prepared to run the clock to six o'clock unless you withdraw the motion. It is until the minister is through giving his statement.

Mr. Roy: Another point is simply this: I think it would be unfair for us to consider the motion about limiting witnesses until we have heard the Solicitor General. It may be that we will be far more co-operative once we have heard the Solicitor General. We may not need to hear other witnesses.

Mr. Chairman: It is understood then that Mr. Williams, if he withdraws his motion, is reserving the right to replace his motion immediately following the minister's statement. Is that fine?

Mr. Williams: No problem.

Mr. Chairman: Thank you.

Hon. Mr. McMurtry: Thank you, Mr. Chairman. Gentlemen, I have not had the benefit of hearing everything that Mr. Roy has been saying. At the outset, though, I did want to indicate to the

committee that we were at this time proposing three amendments to the legislation. We have copies that we can circulate now for the information of the members of the committee.

Basically what we are seeking to do in relation to section 30 is add a section which says, "A police officer, readily identifiable as such, may require the driver of a motor vehicle to stop for the purpose of determining whether or not to make a demand under subsection 2 or 3." That is the stop for the Alert; in other words, a stop for the purpose of requesting an Alert test and for no other purpose. It had been suggested, and in conjunction with that, we were going to amend section 2.

This is something that was of interest particularly to Mr. Renwick, but not to Mr. Renwick alone, and that was to follow the British approach and to state that the first sentence of subsection 2 would read, "A police officer may require a driver of a motor vehicle to stop and the driver of a motor vehicle, when signalled..."

You will recall there was some discussion yesterday which led to this suggested amendment in order that any individual who felt the police officer had acted in a capricious or malicious fashion could still raise that issue.

There was some fairly extensive discussion about the differences which might appear to be relatively subtle to some, changing the wording to, "A police officer may require the driver of a motor vehicle to stop," and be open-ended as opposed to changing that to read--I am sorry. It is simply striking that out so that it says, "The driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop."

We are just striking out that first sentence so that, if a police officer has acted improperly, it cannot be suggested that the first phrase can be argued sort of in an open-ended fashion. Thirdly, it was the insertion in section 2, where I suggested that we would insert the word "wilfully" to meet some of the concerns.

The other matter that I wanted to raise is in view of some of the concerns that have been expressed. I have some difficulty with the approach that has been suggested, although I do not quarrel with the motives behind it, and that is the suggestion that we put some sort of sunset provision in the legislation at the outset. Given the nature of this legislation, law enforcement type of legislation, in my view that would, amongst other things, sort of place a cloud above the legislation from day one.

What I had thought as a possible compromise, because we all really have the same goal in mind--we just may disagree as to how we get there; we are all interested in reducing alcohol abuse on the highway and in maintaining the credibility of our law enforcement agencies--was that we might agree to pass a resolution through this committee where we agree that a few months down the road, probably at least four or five months down the road, to set aside some days in the committee whereby anybody can be called to discuss this legislation.

Basically, what we want is a public platform that would give members and members of the public an opportunity to discuss the merits or otherwise of this legislation and if there have been abuses, then we would know. With that sort of glare publicity, obviously any government would be interested in amending the legislation if it appeared appropriate.

I was hoping that might be a satisfactory compromise, given, as I said a moment ago, that I accept the fact that despite our disagreement, we all agree on those two basic principles: We want to reduce alcohol abuse on the highway and we want to maintain public respect for our law enforcement agencies. That would give us an opportunity to review the legislation.

Those were the comments I wished to make at the outset, Mr. Chairman.

Mr. Chairman: Mr. Williams, Mr. Roy has indicated he wishes to speak. Do you wish to--

Mr. Roy: Can we explore some of these amendments with the Solicitor General? I must admit that I have some difficulty with at least one of these amendments.

Mr. Chairman: Mr. Williams's rights are still reserved. Carry on, Mr. Roy.

Mr. Roy: Mr. Solicitor General, I might state that you are quite right that we in the opposition are as interested as anyone to see to it that something is done about people who are under the influence of alcohol--and that depends on the degree, but nevertheless a decision has been made--if these people are a threat on the highway, that we remove that threat as long as it is done within what we call the due process.

I understand your section 1 amendment whereby what you are doing at this point is giving the police authority to stop to enforce the provisions of section 1 which it did not have. In your original bill, you gave them that authority in section 2. What you are doing is linking it together in section 1, and I understand that. Even though I am not prepared to suggest other refinements of this, I can understand that there is a limitation on a police officer in this particular case that, if he is going to stop an individual, it is for the purpose of enforcing the provisions of subsections 2 and 3. I understand that.

I understand as well your amendment to use the word "wilfully." I think that is a positive amendment, although I still have reservations with the section. I understand that. That again is better legislation than we originally had.

But I must tell you I have great difficulty in following the section 2 amendment whereby you will recall, Mr. Solicitor General, that our concern and the concern expressed here by the witness was the fact that the police apparently under section 2, and as I read it, did not require any reason whatsoever to request a stop.



It did not have to be enforcing any legislation, whether criminal, statutory or otherwise. They could stop you for any reason, the penalty for which was the provisions of subsection 2, \$2,000 or imprisonment for up to six months or both. That was the great concern that the witness had and that we have on this side.

5:40 p.m.

What you are doing basically is changing the wording of this to read, as I read the amended section now, to say: "The driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop."

I have difficulty understanding how that changes our concern, the fact that the police still under that section do not need any motive whatsoever to request a stop. I don't know if I am making myself clear. I don't know how that changes the concern that we have about the fact that under the present section, or at least as I read the present and amended section, the police will still have the power to request an individual to stop without any reason whatsoever and this individual will have to come to what is called a safe stop. Otherwise, he faces the provisions of subsection 2, a fine of up to \$2,000 or six months in jail.

That is the problem. Am I not reading it right?

Hon. Mr. McMurtry: I guess I didn't explain it very well at the outset. This was the subject matter of some fairly extensive discussion. I remember it particularly involved Mr. Renwick, who is one of the people who have suggested this amendment. The amendment is to address this problem.

First of all, it follows the United Kingdom legislative approach, which requires that a driver of a motor vehicle who is signalled or requested to stop shall obey that signal, but it eliminates the first phrase and therefore eliminates the possible argument that may be made that this would entitle a police officer to make a request in some sort of capricious or arbitrary fashion. By eliminating the first phrase, which states a police officer may require the driver of a motor vehicle to stop, and going on as the section states, it still leaves it open to a motorist who feels the police have acted in an arbitrary or capricious manner to raise that defence in court.

That was the subject matter, as I recall, of some discussion. So it was to remove any question that some people read into the presence of the first phrase, namely, that that right of a police officer could be exercised in a capricious or vexatious or arbitrary fashion. By removing that, it was still incumbent upon the police officer to demonstrate that he was not acting in an arbitrary fashion.

Some of you may have felt that to stop a vehicle the police officer had to be restricted to certain circumstances. That was not our intention. As I understood what Mr. Borovoy had to say, it was a question that he felt that most of the public accepted the fact that a police officer had the right to stop a vehicle in the normal

course of events, and there may be a whole host of reasons, as long as it wasn't arbitrary or discriminatory or capricious.

The removal of those words is to make it clear that the police officer must still be acting reasonably. This amendment, as I say, was to address that problem. It was the view of one of the committee members, namely, Mr. Renwick, that this would satisfy him, if it were worded in that fashion, as that was the wording of the British statue.

Mr. Roy: I understand what you are saying. What you are saying is that if you take out the wording, that the police officer may require the driver of a motor vehicle, some people seem to come to the conclusion that that takes away the right of the police to request what you call a capricious stop on the part of the driver.

Well, it makes it silent. It just takes it away. I still see no prohibition on the police to do that. Where I am confused is that in your first amendment to section 1 you state what the police are going to be doing when they are stopping individuals.

Hon. Mr. McMurtry: For that specific purpose, yes.

Mr. Roy: Why would you not do it in section 2, to say for the purpose of enforcing some statutory authority, or something like that, so that there we could be sure?

Hon. Mr. McMurtry: We will put it this way: This was recognized by some members of the committee, by the Canadian Civil Liberties Association, that the public assumes, as a great majority of the public has always assumed, that police officers did have this right, but they could assume that it wouldn't be exercised because of your green eyes or that you are young or you are black, et cetera. Given the nature of modern-day society, the truth of the matter is that law enforcement officers act sometimes on a straight gut feeling.

As long as it is not the sort of feeling that is motivated by capriciousness or by some sort of form of discrimination, then that has always been the case. That is what the public has always assumed, and this is what we are attempting to address. As we read the Court of Appeal decision in the Dedman case, though some people may not agree with our reading, it seemed clear to us that the Court of Appeal suggested such amendment.

Mr. Roy: I don't pretend to speak for all my colleagues, but I must say I still have some difficulty. Apparently, on the suggestion of Mr. Renwick, what you are saying is that if you don't write it out specifically in legislation, then the police are not entitled to make what is called a capricious stop or ask an individual to make a stop for no reason whatsoever.

I am saying to you that by leaving it silent there is nothing--it is not even silent, as my colleague says. It says very simply that once the driver is requested to stop by police for no reason at all, as I see it, he is still compelled to make what is called a safe stop under the punishment of \$2,000 or six months or both.

Hon. Mr. McMurtry: We are talking about maximum sentences, penalties, possibly if it were a high-speed pursuit, et cetera. We like to assume that the courts have some degree of common sense.

Mr. Roy: The suggestion I made last night is that the courts have a degree of common sense. You should give them that discretion in your subsection 3, which you don't do, by the way. You are saying it is three years or nothing.

Nevertheless, coming back to this section, I still feel, unless somebody can bring me some common-law jurisprudence that says otherwise, under your amended section the police will still be entitled to stop an individual for no reason whatsoever. The individual not responding to what is called a safe stop will be facing penalties, the provisions of subsection 2, of \$2,000. I have difficulty accepting that.

Mr. Chairman: Mr. Williams, Mr. Conway has asked to speak next, but you still have your reservation.

Mr. Williams: I will pursue it to its fullest, Mr. Chairman.

Mr. Chairman: Mr. Conway, you are speaking in clarification of the amendments?

Mr. Conway: Correct. First of all, I just want to say that I appreciate the opportunity to discuss this with the Solicitor General. Like my colleague the member for Ottawa East (Mr. Roy), I find that the first and third of the amendments are helpful. I just want to be clear in my own mind, because I was listening to some of the discussion about this proposed amendment last night after we adjourned here.

The more I think about this bill, the more I realize that for me the really difficult part now is this absolute power of the police to stop me in my motor vehicle. When I came here it was my expectation that what we would try to do is to marry that power to stop with the reduce impaired driving everywhere program. I had no difficulty with that. Quite frankly, in your first amendment I think you do a very good job of linking the two.

5:50 p.m.

I really hope there is another line of argumentation because, quite seriously and quite honestly, I want to explore it with you or with any of your staff who are here to make the case.

I find it strange, in some ways almost incredible, that one of the reasons offered in defence of the principle of the absolute power to stop is that it ought to be established in this bill. That is the way I read section 189(a) as amended. I did not hear anything on this from the Solicitor General, and I hope he corrects me if I have made a mistake in my interpretation of what he said, but from the way I understood his response to my colleague the member for Ottawa East, this amended section 2(1) does still leave



the absolute power for the police officer to stop me on the highway.

That being the case, there are two arguments advanced. One is the one I was alluding to earlier, this notion that continues to be advanced, that because the public out there assumes that the police have always had this power, there is nothing particularly wrong in giving it to them. That just does not recommend itself to me at all on a number of grounds, not the least of them being that when one thinks about what the public assumes are the powers of law officers in other areas, one can imagine the kind of legislation that might be forthcoming.

I don't find it at all compelling, I don't even find it reasonable, that we should legislate such an absolute power on the ground that the public thinks the power exists now.

Hon. Mr. McMurtry: You continue to misstate--

Mr. Conway: No. That is one of the arguments that has been advanced. Mr. Renwick has advanced it freely on a number of occasions. I guess Mr. Borovoy did, although I--

Mr. Smith: He said it happened, but he did not say it was a reason to do it.

Mr. Conway: The second point is that the matter is unclear as a result of the Dedman case. Your reading of the Martin judgement on appeal is that you have been invited to fill the gap. I think I represent your understanding accurately. I read the particular case, and I did not get that impression. My reading of the Martin judgement--and I stress again I am not a lawyer--is that he simply indicated that it was within the competence of legislatures to do that.

I think what we must deliberate here in this Legislature is whether it is a necessary thing for us to do and, more important, whether it is a good thing for us to do. What I am hoping to hear about is some specific cases before I am forced to cast a vote on this very critical matter. It seemed to me last night I did not get the kind of argumentation I would like before I grant this general power, which I don't want to grant. I want to make that very clear.

I feel very strongly about the absence of specific cases--and you might have them; I am not saying you don't. I would like to have them presented to me here. What is inadequate about the current situation? What kind of cases are out there that police officers just can't effectively deal with? Why and how is it that the current law is incomplete? What kinds of specific cases can you present to me to give me some quantitative reason why I should give you this extraordinary power, which is what I view it as being?

I am just asking you. I am setting out the framework of my concern. I am not denying that it is very much my instinct to resist absolutely the granting of this absolute power of the police to stop, but I am quite prepared to tell you that as a reasonable person, if you can advance some specific problems as to how the current situation is inadequate or incomplete, then on the basis of that kind of evidence I am quite prepared to be persuaded to a

contrary conclusion.

There is no question, Mr. Solicitor General, that you and others have persuaded me that we need to do certain things to allow the RIDE program to be effective. I am quite happy, as I think all members are, to give you that entitlement. But I did not and I do not want to, in the name of RIDE, open what could be a Pandora's box that I am in no way comfortable with or about in the absence of some specific cases or some specific evidence. I cite again my notation--

Mr. Chairman: You are now becoming--I am anticipating your repetition.

Mr. Conway: All right. I will leave it at that, Mr. Chairman.

Mr. Chairman: I wish to reiterate that we are addressing the Solicitor General with regard to his amendments to clarify that. So in your remarks, Mr. Smith, would you address them back to the Solicitor General with regard to these amendments? That is the subject we are on at the moment.

Mr. Smith: Certainly, Mr. Chairman. That is exactly what I intend to do, sir.

What we are seeing in this particular question is a very fundamental one, because it has been said that most people believe that a police officer has the right to stop you in your vehicle at any time. Of course, we have not done a survey. I suspect probably most people do believe that, but if you put the question differently to people and you said to them, "If you are driving along the highway and there is no reason in the world for a policeman to believe that you have committed an offence under the Highway Traffic Act, there is no reason in the world for the policeman to believe there is something wrong with your vehicle, there is no reason in the world to believe you are driving without your licence and in fact he is not carrying out a program such as the RIDE program, he is not carrying out any kind of spot-check program for the regional municipality, the provincial government or anything of this kind, do you think the policeman should just be able to pull you over to the side because he gets a gut feeling or a whim and decides he would like to pull you over to the side?" I think people might just say: "Gee, that is a little different. I am not sure he has that power."

If you were to go a little further and say to people, "If you are walking along the street and a policeman decides simply to stop you on a whim, on a gut feeling, he doesn't like the look on your face, and there is no reason to be suspicious of you, you have done nothing to arouse suspicion, he has no reason to believe that you may have been involved in a crime or that you might be about to commit a crime, he is not doing a specific spot check for the municipality or for the province, he has no program that he is engaged in at the moment other than just walking around keeping good order, peace and so on, should he be allowed to just stop you on the street, just pick you for no reason at all, not even as part of a random check, and stop you on the street?" a lot of people

would say he certainly should not be.

We are not talking about the average law enforcement officer, because obviously the average law enforcement officer is not going to stop people capriciously. I am prepared to concede that. We all know that, but we all know that once in a while we find ourselves with occasional people who become policemen, just as some who become politicians, members of the Legislature or anything else, who are perhaps unsuited to their work, who might have certain prejudices of their own.

If a policeman decides he is going to stop people because he does not like long-haired youngsters behind the wheel, or if he decides he is going to stop people because he does not like people who kind of look as though their preference in terms of gender is not what the policeman thinks it ought to be, I don't think we want to give the police an unfettered power. I really do not believe that.

I have to ask, since I have always understood both the Solicitor General and his advisers to be people particularly sensitive to due process--I will say that for him; I always thought he was a person particularly sensitive to due process and to reasonable control on police powers--what evil is being undone by this bill? What evil exists in society that requires the unfettered right of policemen to stop people, even outside of a program such as a RIDE program and so on? The amendment--

Hon. Mr. McMurtry: If I may interject for a moment, I think Mr. Elston has a proposed amendment, which we are prepared to accept, that might resolve this.

6 p.m.

Mr. Smith: I would be happy to hear from Mr. Elston.

Mr. Elston: If I may then, Mr. Chairman, we kind of floated with an effort through here to see if we could resolve some of the difficulties. I would like to read now the result of that. Section 189(a) would be amended to read under subsection 1:

"A police officer, in the execution of his legal duties or responsibilities, may require the driver of a motor vehicle to stop, and the driver of a motor vehicle" et cetera. The effective words would be "in the execution of his legal duties or responsibilities."

Mr. Smith: I think we could live with that.

Mr. Elston: I think that would probably resolve a great deal of the problems we had found earlier.

Hon. Mr. McMurtry: I am appreciative of this amendment. I was just going to say that it is very difficult to be overly specific but I have to say there was a major Brinks robbery where I have to admit an OPP officer stopped this vehicle. There was something funny; he had very great difficulty in explaining why he stopped this vehicle. He stopped it and it turned out that the



occupants were subsequently convicted of a major Brinks robbery. But it was clear that he was not acting capriciously. In any event--

Mr. Smith: I suspect what we are talking about there, Mr. Minister, is a situation where an experienced police officer picked up what would be reasonable grounds to be suspicious but had difficulty verbalizing it. I doubt that he suddenly had a lightning bolt hit him from heaven. I suspect what happens in a situation like that is he may have difficulty verbalizing it.

Frankly, as a physician, for example, you sometimes find yourself with a case where you just get a sense that there is something wrong. Perhaps there might be a malignancy and so on. You cannot say exactly what it is that brought your attention to it, but an experienced physician who is able to be very much in tune with what he is feeling can sometimes verbalize it where an inexperienced person or even a person who is not as verbal cannot.

I do not think that is a problem. I think reasonable and probable grounds is one thing and capriciousness and prejudice is another. All we are seeking is not to leave this totally unfettered. I would think if Elston's amendment is acceptable, we could all live with that.

Mr. Williams: Mr. Chairman, given that it is six o'clock and we have had the opportunity now to explore possibilities of compromise on this, I guess we should determine whether there is now a consensus that would permit us tomorrow to go to clause-by-clause consideration of the bill so as not to necessitate formal motions.

Mr. Roy: I tell you frankly, I would still like to ask Dr. Lucas a few questions about the calibration of this machine and everything else. I do not think that will take up much time.

Mr. Williams: Could we allow 15 minutes at the beginning of next day and then go to clause-by-clause by agreement?

Mr. Roy: It won't take very long in clause-by-clause now, because we have agreed to most--

Mr. Elston: In fairness as well to Dr. Lucas, I know he has a presentation prepared and I think it would be of assistance of us. I agree with John that--

Mr. Roy: We could agree. What is it you are trying to accomplish?

Mr. Williams: I think if we are going to report back to the House, we will have to complete tomorrow.

Interjections.

Mr. Chairman: Gentlemen, we are breaking down here. What is the consensus?

Mr. Williams: We do have some form of consensus at last.

Mr. Smith: With the amendment the Solicitor General seems to be ready to agree to, the amendment that Elston has suggested, there would be no reason for us to block progress of this bill. We have no intention of blocking progress. We simply have some reasonable questions to ask the doctor on the meaning of the 0.05 and so on. We do not see any reason why the bill should not come to a vote at a reasonable time tomorrow.

I do not think we should set arbitrary time limits on the doctor, because we want to hear him out and we want to ask him reasonable questions. With that amendment, I think we have no reason to extend the discussion unduly.

Mr. Chairman: Then it is the consensus of the committee members that first we are dealing with private member's Bill Pr21--that is the first item following routine proceedings tomorrow--then we proceed with Dr. Lucas and then we proceed with the clause-by-clause, with the entire matter to be completed tomorrow?

Mr. MacQuarrie: Mr. Chairman, we can still then discuss the amendments?

Mr. Chairman: Certainly.

Mr. MacQuarrie: Because I have some reservations about them.

The committee adjourned at 6:06 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 178, HIGHWAY TRAFFIC AMENDMENT ACT

THURSDAY, DECEMBER 17, 1981

Afternoon Sitting





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
Breithaupt, J. R. (Kitchener L)  
Elston, M. J. (Huron-Bruce L)  
Gordon, J. K. (Sudbury PC)  
MacQuarrie, R. W. (Carleton East PC)  
Mitchell, R. C. (Carleton PC)  
Piché, R. L. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Swart, M. (Welland-Thorold NDP)  
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

Also taking part:

Conway, S. G. (Renfrew North L)  
McMurtry, Hon. R. R.; Attorney General and Solicitor General  
(Eglinton PC)  
Roy, A. J. (Ottawa East L)

From the Ministry of the Solicitor General:

Lucas, D. M., Director, Centre of Forensic Sciences  
Segal, M., Counsel, Crown Law Office Criminal

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 17, 1981

The committee met at 3:55 p.m. in room No. 151.

After other business:

4:27 p.m.

HIGHWAY TRAFFIC AMENDMENT ACT  
(continued)

Mr. Chairman: We shall reconvene with the matter of Bill 178, An Act to amend the Highway Traffic Act. I believe Mr. Lucas was to be the final witness on this matter. Could you lead off with your qualifications in the area of forensic sciences, particularly in regard to alcohol abuse as it pertains to the highways?

Mr. Lucas: Very briefly, my position is director of the Centre of Forensic Sciences, which is a branch of the Ministry of the Solicitor General. I have been in that position since 1967, and prior to that for 10 years, I actually worked in the field as a forensic scientist. So I have been in the field for almost 25 years. I have a master of science degree from the University of Toronto, and my involvement with alcohol and driving has been throughout that entire period.

My initial responsibility when I joined the centre was to set up the breath-testing program for the province, which meant acquiring the equipment and training the police officers to use it. I would say that, at the present time, all police officers who use breath-testing equipment in Ontario have been trained under my supervision. I have also been chairman of the committee on alcohol and drugs of the National Safety Council in the United States, and I am currently chairman of the breath test committee of the Canadian Society of Forensic Science, which is the committee that advises the Attorney General of Canada on approval of equipment.

I have written a number of papers in this field and have done research in the field of drinking-driving, and I have been particularly active in the field of breath-testing, evaluation of equipment, and developing procedures for the use of that equipment.

Mr. Chairman: Thank you, Mr. Lucas, would you please carry on with your presentation.

Mr. Lucas: Mr. Chairman, I perceive that my function is to attempt to answer questions on the technical matters that have been raised by this bill. In reading the comments that have been made, and in listening to the debate, I have formulated an organization of that into four different areas of questions I have heard. One of these is, why 50 milligrams as opposed to some other number? Another deals with the reliability and accuracy of the ALERT, alcohol level evaluation roadside tester, apparatus. A third

deals with the potential impact of such legislation, and the fourth deals with how much can one drink and stay below 50 milligrams.

4:30 p.m.

Dealing with the first one, why 50 milligrams as opposed to some other number, I have to say it is fairly clear that any number one chooses is arbitrary. The important thing is that it not be capricious. The 50-milligram number is supported, I believe, by scientific research that has been done over the years in three general areas. One of these is laboratory studies that have been done with simulators of various kinds. There have been all kinds of studies done of these going back as far as 1939. To distil the results of these for the committee, I think it is fair to say they have shown that impairment of skills related to driving begins somewhere around 30 or 50 milligrams in 100 millilitres.

The second type of study is those done under controlled conditions, with people actually driving cars under laboratory conditions. With these again, there are many studies going back to around 1940 and, again, if one distils those, there is a consensus from them that impairment begins somewhere around 30 to 50 milligrams. For example, there was a very large study done in 1956 under the auspices of the Royal Canadian Mounted Police in Canada. It involved people from the University of Toronto and from my own organization. It was one of these closed-course studies with people driving cars under controlled conditions. It found that 70 per cent of the people who were studied showed detectable impairment at 50 milligrams per 100 millilitres.

The third type of study is the sort of thing I call a real world study: What is actually happening on the highway in terms of accidents? Again, there is literature going back to 1930, and you can find all kinds of things there. Again, I believe it is a fair consensus from that study that the risk of accidents starts to increase around 40 to 50 milligrams per 100 millilitres. I brought to assist the committee two charts that, I think, demonstrate this. These are charts taken from the report of what is generally regarded as the world standard for research of this kind. They deal with accidents and the risk of accidents.

This is from the study that is known as the Grand Rapids study, or the Borkenstein study. It is the one that everyone refers to. If you look at the one labelled chart nine, it shows the risk of having an accident. Up to 0.03, or 30 milligrams per cent, the chances of having an accident are actually a little bit less than they are when you are sober. But at 40 you can see it just crosses the line and at 50 it starts to go up. The important thing here is that something happens at 50. The chances of having an accident start to increase. They do not increase greatly, but they start to increase.

If you look at the one marked chart 15, I would just point out that it says, "relative probability of causing an accident." Although I am presenting this chart for you, I do not agree with the word "causing." You cannot really say "causing" but "involvement" in an accident. Again, you can see that the chances



of involvement of an accident start to go up at around 50. That is where, I believe, the 50 comes from.

Mr. Renwick: We can change that word "causing" to "involvement," eh?

Mr. Lucas: I have taken this from another report. I cannot change the report, but my opinion is that you cannot say "causing."

Mr. Renwick: So it would be relative probability of "involvement" in an accident.

Mr. Lucas: Yes. In dealing with accidents in the real world, one of the questions that was raised was, what is the situation in Ontario? I have looked up our studies based upon the analysis for alcohol in the blood of drivers who are killed in Ontario. I can tell you that in 1980, 12.3 per cent of the drivers killed who were tested for alcohol and who had some alcohol involved, were in the range of 50 to 90 milligrams per 100 millilitres that is covered by this bill.

Mr. Roy: That is 12.3 per cent of those killed?

Mr. Lucas: Yes, 12.3 per cent of the drinking drivers killed. That is not counting the ones who had no alcohol at all, but, of those who had alcohol, 12.3 per cent were in the range of 50 to 90.

So those, I think, are some of the reasons for the figure of 50. The differentiation between 50 and 80 is, I believe the literature shows, that at 80 there is little doubt that all people are significantly impaired. At 50, there is not the same degree of certainty. There is certainly some indication of impairment in many people, but I do not think one can go to the point of saying all people. In my own layperson's view, that is the distinction I see between a criminal offence and what is proposed here.

The second area I thought you might be interested in was the accuracy and reliability of the ALERT equipment. As Mr. Thomas quite properly pointed out the other night, it is a piece of hardware, but like any piece of hardware, it is not 100 per cent reliable. No piece of hardware is. I would just say it is a very good piece of hardware. It is infinitely better than the alternative, which is the nose of a policeman or the nose of somebody else. There is no comparison there.

I have to point out that the equipment is asked to do a very difficult task. It is asked, very quickly and very easily at the roadside, under all kinds of conditions, in the hands of a nonchemist, to make an analysis of a very small amount of alcohol. The actual amount of alcohol being measured is about five tenths of a microgram. That is five tenths of one millionth of a gram. It is a very small amount of alcohol that is being measured, and it is not an easy thing to do. The accuracy of the equipment, as claimed by the manufacturer, is 10 per cent at 100 milligrams. That is, it would read within 10 milligrams at 100, and we find it does that.

At 50 milligrams, it should read within five milligrams, in other words, between 45 and 55, and we find it does that.

It is difficult to express the accuracy of the equipment because it does not give a number. It gives a reading, "warn, pass or fail." But our findings are that, when it is properly calibrated and properly used, when we test persons at 40, we get no false readings. When we test people at 60, we get no false readings. I cannot, however, tell you that, if we test someone at 49, you will not sometimes get a false reading. That is asking too much of this equipment or, indeed, any equipment. We could use the most sophisticated equipment in our laboratory and not get that kind of accuracy.

There are some other problems with this equipment. Those of you who had an opportunity to try it the other day will know it is somewhat difficult to blow into. You have to blow fairly hard and for about six seconds. That is simply a requirement. If you want accuracy, you have to do that. That cannot be really compromised. However, I can tell you, in practice in the field, we do not find many people who are unable to do that, who are trying to do it.

4:40 p.m.

Another problem with the equipment is that it is not specific for ethyl alcohol. That is not a practical problem, however, because the only two things that are likely to be on the breath of a living person, and that is whom we are talking about, are cigarette smoke and acetone. Cigarette smoke we deal with simply by procedure. The person is asked not to smoke for three minutes prior to taking the test, and if that is done, there is no problem with cigarette smoke.

Acetone is a potential and theoretical problem, because it may be present on the breath of an uncontrolled diabetic or it may be present on the breath of a person who is on an extreme fasting diet. While theoretically that is possible, we have never seen such a person driving a car, so we do not consider it to be a serious problem, but I feel obliged to point out to you those limitations in the equipment.

Another area I believe there is a question about is, what is the potential impact of this legislation? This is very difficult to assess at this point. However, I can give you some figures I have derived from the former RIDE program in Metro. Essentially, when operated between 10 o'clock in the morning and three o'clock the following morning seven days a week, about 0.4 per cent of the people who are checked would fall in the "warn" area. That is if you go from 10 in the morning to three o'clock the following morning. If you look just at three o'clock in the morning, you will find a lot more than that in this area. So it depends on the time of day and the day of the week what sort of impact this will have.

That is in a spot-check type of program. Where we have looked at a normal police patrol, such as the OPP would do, over a 24-hour period, we have found about 1.6 per cent of the people investigated would give a "warn" reading, would fall within this area. That

gives you some idea of the numbers of persons who might be involved.

It is very difficult to determine the impact of such legislation. The RIDE program, for example, was very thoroughly evaluated by the Addiction Research Foundation, which found it could not conclusively prove there was a reduction in alcohol-related accidents. It was looking for a very rigorous kind of proof, but it could not prove one way or the other. If you asked those people, however, their gut reaction is that some people are deterred by such legislation.

To give another example of that, most of the people in this geographic area are very conscious of the spot-check program the Metropolitan Toronto Police run at Christmas. If you look at the drinking drivers involved in accidents for the rest of the year, from January to November, you find about nine per cent of the accidents involve drinking drivers. If you look just at December, you find about eight per cent of the accidents involve drinking drivers. In other words, there is about a one per cent reduction, which I can tell you is something in traffic safety you are really delighted to get. If you can get a one per cent impact, you feel you have really accomplished something.

If one believes, as I think most of us do, there is more drinking in December, it would follow there would normally be more driving after drinking and it would follow there should be more drinking-driver accidents in December, if it were not for the Metro Christmas campaign. It is that sort of thing that convinces those of us involved with this that this sort of program can have a deterrent effect, which it is designed to have.

The last area of questioning was about how much alcohol is involved. Again, I prepared a chart to assist you with that. In some ways, Mr. Chairman, this question is the easiest to answer because you can give a precise answer if you know the variables. But it is difficult to answer because there are so many variables.

As I have tried to indicate in the chart you will be getting, the number of drinks required to produce a 50-milligram reading depends to a large extent on body weight, the time involved in drinking it, the sex and the body build. I suppose those latter two are related, because we are talking simply about the proportion of fat to water in the body. As you have probably noticed, women are built a little differently from men and they have a little higher proportion of fat. Those things are related.

If we take persons of average build, there are three scenarios there: a three-hour drinking period, a two-hour period, and a one-hour drinking period. I have given you three sets of weights for both male and female. You can see the amounts that are required.

For a 200-pound man drinking over three hours and driving a half hour later, he can drink the equivalent of five bottles of beer or seven and a half ounces of spirits or five glasses of wine and still be reasonably sure of not exceeding 50.

On the other hand, a 100-pound female drinking for only one



hour and driving one quarter of an hour later could only drink one and a half bottles of beer. This is the sort of range. It is possible to calculate this if you know weight and time.

Mr. Mitchell: It is rather interesting, Mr. Chairman, if I might interject, that Global News at noon carried out a test. They were discussing this piece of legislation. The gentleman took three one-and-a-half-ounce drinks. They did not give his weight but I would guess he would be in the 175-pound range. He took three drinks; he read 0.047; he ran a red light when he took the test. He had an additional three drinks which put him up to 100--by the driving machine; he was doing the test on the driving machine. In that he actually demolished a car. I see these figures here and recall what I saw in the program at noon and it is pretty hard to dispute those facts.

Mr. Lucas: Those are the questions I heard for which I tried to prepare some answers. I am sure there are others. If I may, Mr. Chairman, I would like to make one other comment, from the perspective of a nonlawyer but a person who has been very much concerned.

Hon. Mr. McMurtry: Your credibility has increased dramatically with that simple statement.

Mr. Lucas: I have been in an area where one of my responsibilities has involved traffic safety for almost 25 years, and I can tell you it is undoubtedly the most frustrating aspect of my responsibilities because there seems to be so little we can accomplish. As I said earlier, if one can achieve a one per cent change, one feels one has really accomplished a lot.

The problem of the drinking driver I think you are all familiar with. I think it is important we all recognize there is no panacea to that problem. If we can accomplish a small change, we should consider ourselves as having accomplished something.

In order to reduce the drinking driver problem there are two things that have to be done. One is we have to change the attitude of the people towards drinking and driving after drinking. I am not terribly optimistic about being able to do that. I do not know how to do that.

4:50 p.m.

The second thing is that I think somehow we have to deter them. One way that is considered to do that is to increase their perception of the risk, either their perception of the real risk, which is having an accident, or their perception of the other risk which most people seem to think of, which is the chance of being caught. This bill I think is intended to do the latter. It is not intended to catch more people. It is intended to deter people and one can hope it will do it.

We are constantly being reminded that we need to be innovative in this field and one of the things I find appealing about this type of thing is that it is innovative. It tends to do something without bringing in the whole process of law and law

enforcement. It is doing it with what I perceive to be relatively minor inconvenience. Now that clearly is a judgement decision, but that's the way I perceive it and that's one of the things I find appealing. It is innovative. It is worth a try I think to see if it will accomplish what we hope.

One other thing it does is for the police officer at the roadside, who generally is also concerned about this problem. When we gave them roadside screening devices, almost invariably the first question they asked was, "That's great, it's fine, it can help me make better decisions, but what do I do with the people in the warn area?" They say, "Until now, I haven't really known about those people but now I know I have got a drinking driver what am I going to do with him? Am I going to release him? If I release him and he has an accident subsequently, how am I going to feel? What are my responsibilities?"

I think that has been one of their major concerns. I think one of the other things I find attractive about this particular type of legislation that has been in the other provinces is that it gives the police officer some alternative to deal with that particular problem: what does he do with those people? He knows now they are drinking drivers. How does he deal with them? Those are the comments I had to make, Mr. Chairman.

Mr. Roy: Mr. Lucas, I am interested, as most people are, with the essential element of this whole process and that is the deterrent aspect of it.

You will recall that in 1968 when you brought in the amendment to the Criminal Code, the famous amendment which compelled individuals to submit themselves to a test upon a demand made on reasonable and probable grounds by the police, I can recall at that time the fear of the Lord being spread all over the community that I was part of in 1968. Everybody was talking at cocktail parties about how everybody would have to watch themselves and I can remember the impact it had originally.

It would appear that this legislation is the most important legislation we have coming forward since the 1968 legislation. I wonder if you could give us, because obviously you were part of the process back in 1968, any figures as to how the legislation in 1968 deterred? Also could you say briefly what has happened to that process since? You talked about one per cent here as being a very significant deterrent.

Mr. Lucas: It was 1969; December 1969.

Mr. Roy: I guess it was introduced in 1968.

Mr. Lucas: I have some figures that show that in Ontario in 1969 there were about 520 drinking drivers involved in fatal accidents.

Mr. Roy: That's 1969?

Mr. Lucas: Yes. In 1970, which was the first full year in which that legislation was in effect, there were about 480 so

there's a difference of about seven or eight per cent. Following that, it started to go back up again. In 1971 it was back to where it was in 1969. It proceeded upwards until 1973 and it has kind of fluctuated a bit since then. It had an impact for the first year and that's been the experience elsewhere.

A new proposal has an impact temporarily and then eventually you get back up to where you were before. The reason we believe that happens is that as you said, people believe there is a policeman on every corner for a while and it affects their behaviour. After a while they begin to realize that that's not so. So it's important how they perceive their chances of being caught.

Mr. Roy: If I might just proceed on that, I notice that in the seatbelt legislation, the use of seatbelts I think prior to the legislation was something around 20 per cent and the legislation brought it up originally to something over 50 per cent and then it started coming back down. But I notice that now with continual enforcement--the police will have an occasional blitz--they are getting it back up to somewhere around 60 per cent. They are trying to get it up higher and this appears to be a very successful program if you have climbed all that way and you are maintaining it at that level.

If you don't mind my saying so, you say one per cent is significant and yet I get the feeling it is not that significant when you look at the number of accidents and the number of drinking drivers that are involved.

Mr. Lucas: Unless you are in that one per cent.

Mr. Roy: Yes, I suppose.

Mr. Lucas: Clearly, the bill itself will not have any lasting effect of deterrence unless it is enforced, and the effect will depend to a large extent on how effectively the police are able to enforce it and what resources they are able to deploy to deal with this particular problem.

Mr. Roy: Could I ask one other question that is of concern to me, Mr. Chairman, regarding the machine itself, the calibration of it that is proposed under subsection 7. I take it the idea is to calibrate the machine so that it will signify warn at 0.05 and over. My question is twofold: first of all what margin of error, if any, are you suggesting to the police on that; secondly, can these be changed? Is there a seal on that machine to prevent tampering?

I am cognizant of the fact that subsection 8 says that it shall be presumed in absence of proof to the contrary that any roadside screening device has been calibrated as required under section 7. So that you presume in this case, whereas in the breathalyser process the police go in and they have to put in a certificate. You can ask them questions about whether he tested his machine and everything else.

I wonder if you might respond to those two questions.



Mr. Lucas: Mr. Chairman, to answer the second question about the seal first, the calibration of the device is currently checked. It is checked by a qualified technician. Once that is set, the calibration is then sealed and it remains sealed until the following check that is made. The individual operator cannot change the calibration. The device of course has been used as simply a screening device up until now, and we have calibrated them at 100 and have accepted anything between 95 and 105.

What we will do now, because clearly it will have a greater impact now, is we will not accept anything over 100. We will aim at 100 and accept anything from 95 to 100, because in the particular device if you calibrate the fail at 100, the warn is automatically half that; you don't calibrate it warn, you calibrate it fail. The warn will then be set anywhere between 50 and 53.

5 p.m.

Mr. Roy: If I am a potential candidate for this machine, can I see the seal on it? If I ask to see if the machine is sealed, is it obvious from the machine that it is?

Mr. Lucas: You can see it. It is on the outside of the instrument and you should see the seal and the initials of the person who actually calibrated it written on that seal.

Mr. Roy: Banging the machine or anything like that will not in theory affect it?

Mr. Lucas: No. It is a remarkably rugged device. Just to give you one example, we had one that was left on top of a police car, the policeman drove off and ran over it and it still ran and gave proper results the next day. It is a very rugged device.

Mr. Roy: You are saying the margin is going to say warn between 50 and 53.

Mr. Lucas: It will be calibrated so that it will not be less than 50 and it might go up to 53.

Mr. Roy: You have not made a decision on that?

Mr. Lucas: No, that is as good as you can get. That is very good calibration. Three milligrams is pretty accurate.

Mr. Renwick: Mr. Lucas, I really appreciate your presentation on it and I only have a couple of questions about it. My first one is when the select committee on highway safety reported in 1977, which was formerly under the chairmanship of a colleague of ours, Fred Young, one of a series of recommendations agreeing with you is that there is no one solution to this problem was put forward.

As a member of the assembly I would be interested to know to what extent that was helpful in the process of coming to this kind of decision, recognizing that it does take time for the proposals to come forward, but that committee did recommend this suspension period of time. Would you have taken that report into consideration

and was it part of the process that you--not you, the ministry went through in arriving at this final decision to proceed this way?

Mr. Lucas: I was just going to say, Mr. Chairman, that I did not have any decision on this particular legislation. In the interministerial committee that discussed this matter over a couple of years, clearly that report was one of the things we referred to.

Mr. Renwick: It was thought to be of valuable assistance to you.

Mr. Lucas: Yes.

Hon. Mr. McMurtry: Just to follow that up, I have a copy of the 1979 Ontario roadside summary report. You were a member of that committee and you in effect made the same recommendation that Mr. Young's committee made.

Mr. Renwick: I am very interested because it was a colleague in our caucus who chaired the committee. We had three members and the other parties had a representative number of members on that, but I may say in our caucus deliberations on the bill the caucus was influenced a lot by the work of that committee and its recommendations in coming to our conclusions to support this bill. It was not an easy decision for us, as my colleague the member for Cornwall (Mr. Samis) indicated.

I am satisfied, both from the opportunity we had to test the machine and to actually physically see it, from the discussion and from your comments today about the integrity of the machine. I thought the other interesting fact that came out is that this is a single instrument made by one company which is used throughout; there is not a series of instruments. I understand it is used not only here, but across Canada and there is no other instrument. If I recall correctly, it is made in Mississauga.

Mr. Lucas: That is correct. It is made in Mississauga. This is the only instrument that is currently approved in Canada, although I can tell you the federal Minister of Justice is considering one other for approval. It is also used very widely in the United States and it is also approved for use in the United Kingdom as a screening device.

Mr. Renwick: It certainly helped me to know it was a uniform instrument that everybody was dealing with, that every local municipality did not have its own particular favourite machine that they were dealing with.

I am satisfied, to the extent, as you say, that hardware can have an integrity, with the integrity of the machine. I accept the integrity of the police officer, subject to a couple of questions relating to competence rather than the integrity of the force. Even if you don't know, perhaps the minister or his advisers can do it.

Who does the calibration, say, in Metropolitan Toronto? I assume it is not the officer who has the vehicle who every morning goes out and calibrates that machine. I think it would be helpful if you could explain that aspect of it.

Mr. Lucas: The calibration is done in Metropolitan Toronto specifically by three officers only and they are in themselves qualified technicians under the Criminal Code. In other words, they are competent breathalyser operators who have had an additional one day's training done at a laboratory and they are the only three who are permitted to calibrate.

Mr. Renwick: For the whole of Metropolitan Toronto?

Mr. Lucas: All of the instruments that are used in Metropolitan Toronto. The user does not do the calibration. It is done by a specialized officer. One of the things I should tell you is that we have not, in a number of the other areas--when I say "we" I mean our laboratory--has not been as directly involved with calibration of these as we have been with the breathalysers, because they had been used just as screening devices. We now feel, however, if this legislation is passed that we will have to pay more attention to that and we will be giving additional training to specially qualified officers who will do the calibrations. It is a very important part of the operation.

Mr. Renwick: Perhaps the minister would respond to what extent in the other police forces across the province and in the Ontario Provincial Police the integrity of that calibration process is either protected now or going to be protected by the Ontario Police Commission, for example, if you standardize it.

Hon. Mr. McMurtry: Mr. Lucas can answer this as well as anyone, because all police forces look to Mr. Lucas for advice in this respect.

Mr. Lucas: The present situation is that with Metro and with the OPP they are calibrated only by qualified technicians. With some of the other police forces they are currently being calibrated by what we call second and third generation people. We have trained somebody and he in turn has trained somebody.

What we would propose to do is that only first generation people be permitted to calibrate it; that there be a limited number and that they all receive training either from ourselves or from--there is a very highly qualified member of the OPP who has spent a lot of time with us who would probably do the training of the other police forces.

Mr. Renwick: More or less to duplicate the protection in the Metro police system?

Mr. Lucas: Exactly.

Mr. Conway: Mr. Lucas, I certainly want to thank you for your attendance here today. I appreciate what you have had to tell us. If I might, I am going to take you through chart nine again. Unfortunately I did not have access to a copy of chart IX when you were going through it. I would just like you to explain it to me again, give me a rough interpretation of what this chart intends to suggest, just so I am not under any misapprehension.



Mr. Lucas: I have to explain what the accident involvement index means. It is in per cent; those numbers you see along the lefthand side are percentages. It is a relationship of the drivers with those blood alcohol levels, comparing those who were involved in accidents with those who were not involved in accidents.

5:10 p.m.

As you can see, at 0.05, that spot is actually seven per cent. At 0.05, seven per cent more drivers were involved in accidents than were not involved in accidents. Does that help you?

Mr. Conway: I want to get some explanation of the negative factor. It was stated, in partial jest I assume, that--I just want to clarify this so that no one could be under the impression that that first drink could be a safeguard on the basis of this.

Mr. Lucas: Of course, when this report first came out, everybody noticed that dip and the immediate reaction was that you are safer to have one drink than not. This study involved a lot of other things besides alcohol, factors that may cause accidents. A detailed study of all of this data afterwards showed that the apparent reason for that dip, the very low level, is that the people who were found to have those low levels were the sorts of people who were more predisposed to having accidents for other reasons, so the alcohol was kind of clouding the issue a bit there.

That is one explanation for it; there is some statistical basis for it.

Mr. Conway: Most Friday afternoons I leave this place for a 260-mile drive. Could it be argued that, instead of doing what I normally do, which is ingesting a cup of coffee, that I in fact would be a safer driver if I had a pint of beer?

Mr. Lucas: I would not argue that--I mean I would not make that argument. I would--

Mr. Conway: Could I successfully, on the basis of that statistical data?

Mr. Lucas: No.

Mr. Conway: Fine, that makes me feel a little better. I should say, I presume like all honourable members here, I drive a lot and do not drink. As as Ontario Liberal, I am reminded that one of our--

Hon. Mr. McMurtry: You are a unique bird, I will tell you.

Interjections.

Mr. Conway: As an Ontario Liberal, Mr. Lucas, I am reminded that we once took the position that the way to deal with these kinds of problems was to ban the bar; get the government out

of the liquor business. This is offered as a more innovative way to deal with the problem and you are the expert, not I.

I have had some problems. My principal interest in this bill, when I first heard of it, was this double standard. I am making no apologies for them; I still have real difficulty with them in this respect.

I, as a person who drives a lot, am very much interested in making those highways as safe as possible. I had generally assumed, and I guess wrongly so, that the legislation enforcing the 0.08 level was taking away from my highway most people who could be a hazard as a result of the ingestion of alcohol. Along comes this debate and I get the very distinct impression, from what you are telling me, that there are a lot of people out there, below 0.08 and perhaps right down to 0.03, who do constitute a hazard or concern for the motoring public, or pedestrians, or those who have some relationship with cars.

Recognizing as well the concern we all have to have the safest possible society, the one question I continue to ask myself is if that goal is laudable, that important, and I happen to think it is, why do we not just enforce a 0.05 level, or a 0.04 level, and leave little if any doubt about these nearly drunk drivers out there?

What is your response to that? Do you disagree with that?

Mr. Lucas: My response is that I am not a legislator and I cannot deal precisely with your suggestion as to whether or not we should legislate that.

I can only say that in my nonlawyer's view, at 0.08 I am satisfied beyond a reasonable doubt that that person's driving ability is impaired. That is, as I understand it, the criterion that is required for a criminal sanction. At 0.05 there certainly are some people, many people, who are impaired. I do not think I could convince you, or I do not think the scientific literature could convince you that all persons at 0.05, beyond a reasonable doubt, are impaired, and that is the distinction that I make, as a lay person.

Mr. Conway: But as somebody who has had 20 years' experience in this area, I do not take it, from what you said, that you personally would have any difficulty with a national standard of 0.05. Better to be safe than sorry, presumably.

Mr. Lucas: If it were noncriminal; if it were not a criminal offence. I make that distinction. It may be I am the only one who makes it but I do in my own mind.

Mr. Roy: I am just wondering, Mr. Lucas, whether, apart from the fact that you still have concern that some people at 0.05 may not warrant, for instance, criminal sanctions against them, is there the added factor that this whole process of enforcement is more efficient than the other of charging people and hauling them off.

Mr. Lucas: On the particular point that Mr. Conway raised, that is not one aspect, but I think that is an aspect that I find attractive about this approach--that it is swift and it does increase the chance of apprehension and therefore, one would hope, increases the terms.

Mr. Roy: I see.

Mr. Conway: Finally, Mr. Chairman, I want to say to Mr. Lucas that I found his comment very helpful that this machine is very durable. I missed the test that was kindly offered to the assembly the other day. I do not even know what this machine looks like. It is what, a shoebox size?

Mr. Lucas: I have not got a picture with me. It is about half the size of a shoebox. It measures about seven by four by two inches and weighs about a pound and a half. It is battery operated.

Mr. Conway: I understood you to say that in one instance the unit was in fact driven upon.

Mr. Lucas: Yes, the officer using it put it on the roof of his car to do something else and forgot he had put it there. As he drove off, it fell off and was run over. I understand he had to write several reports about that, but the instrument did in fact function afterwards.

Mr. Conway: That is helpful, because I think one of the concerns the public might have, and surely one of the concerns I have about the technology, is whether or not, if it is sitting around in the front of a police cruiser being jostled about, it might lose some of its calibration or whatever. Are you absolutely certain that that cannot happen?

Mr. Lucas: That I am not concerned about at all.

Mr. Conway: Finally, you did say there was no hard evidence to correlate the RIDE program with a lessening of drinking and driving.

Mr. Lucas: Yes, the Addiction Research Foundation did do a very hard study of that. You have to appreciate that it is a very difficult thing to do, to evaluate whether one act that you have taken has had an impact on something like accidents. This was only being done in the borough of Etobicoke, for example, and people in Scarborough were not immune at what happened in Etobicoke, but what was being done was comparing Etobicoke with Scarborough. A statistically significant accident reduction was not apparent during the period of that program, which was 12 months.

5:20 p.m.

Mr. Conway: But it is your feeling the public out there bloody well knows that in Etobicoke this trap is set and exists and they had better be very careful about driving through it.

Mr. Lucas: I have no doubt about that whatsoever. I am just unable to prove that in a rigorous scientific state.



Mr. Conway: But you can certainly see that as the principal immediate benefit.

Mr. Lucas: Very much so.

Mr. Conway: There is no other companion piece of reinforcing regulation or legislation that ought to go along with this. Standing by itself, this is adequate. Oftentimes people in your position argue that this kind of thing ought to happen but there are a few other things that should go with it. I presume, for example, you are not altogether keen about opening our licensed establishments for a longer period of time, as part of a companion law?

Mr. Lucas: I haven't given that any particular thought. I wouldn't want to comment. Obviously there is the companion legislation of the Criminal Code, which is quite strong. I think what is important here is not only the legislation itself, but that the public be well informed of it and that the police devote some resources, as much as they possibly can, to the enforcing of it.

Mr. Conway: Thank you very much, Mr. Lucas.

Mr. Mitchell: I just have one question, Mr. Chairman, and then in light of the agreement we reached yesterday, I would hope the committee would be prepared to move on to clause by clause. We agreed yesterday we would finish this evening and our session finishes at six o'clock.

Mr. Chairman: First, it is 5:45 because this is private members' day. I was going to be asking what time schedule you wished and what dispensation you wished from the House.

Mr. Mitchell: The last sheet you gave us, Mr. Lucas, really was the one that interested me the most because, as I say, I was fortunate enough to have seen this particular test carried out on television at noon. The thing about the test was that there was no food taken in. The member for Renfrew North mentioned that he drives back and forth, as I do on most weekends whenever possible, and I know that I must have my cup of coffee to drive, but usually I drive without having lunch.

A great many motorists will have a couple of good healthy belts without any food and then head off. In somewhat less than an hour they are into the car. This figure could become much worse if there was no food taken in. If they had even two drinks within half an hour and then drove, the effect on the body metabolism could be somewhat the same, as I understand it.

Mr. Lucas: The figures I presented you with presume no food. This is the worst case. If you drank it in half an hour it would be less.

Mr. Mitchell: I just wanted to confirm that. Mr. Chairman, that was the only question I had and in the light of the agreement reached with the leader of the Liberal Party yesterday--

Mr. Chairman: I would not want to go so far; again we have had our troubles with the definition of agreement in this committee.

Mr. Mitchell: Mr. Chairman, I stand to be corrected but I am quite well aware the leader did say that if the amendment as proposed by Mr. Elston were to be accepted and if there was some appearance that it was going to be, he saw no problem in our dealing with this today and completing our deliberations on clause by clause. I would therefore--

Mr. Chairman: Mr. Samis has asked to speak.

Mr. Mitchell: If he has a couple of questions, I am prepared, but may I ask that we start with clause by clause no later than half past if Mr. Samis finds that acceptable?

Mr. Samis: May I just ask two quick questions, Mr. Lucas? Can you give us a little indication of the sample involved in this study in chart nine, especially the percentage beyond Metro Toronto?

Mr. Lucas: No, this is not Metropolitan Toronto. That study is derived from what is referred to as the Grand Rapids study. It involved a study for one full year of every single accident that occurred in that city, and in addition to that, the study of five other people passing the same point at the same time who did not have an accident. It was a massive study. Demographically, Grand Rapids, Michigan, is equivalent to the United States of America. It does not specifically apply to Canada but I think it is applicable.

Mr. Samis: If we get beyond 0.05 into that grey zone, and you have concluded there is some element of danger or threat to the motoring public, is there any way you can compare that with the element of danger or threat involved with psychological or emotional factors affecting a driver--i.e., stress, depression, anger; any of those emotions and how they affect that particular driver?

Mr. Lucas: No, I cannot do that.

Mr. Samis: I realize there is no breathalyser thing to measure, but you will admit that can have a serious influence on a person's driving habits, behaviour or conduct.

Mr. Lucas: I would certainly accept that. I have never studied that; it is outside my field.

Mr. Samis: Are you aware of any studies that have been done on that aspect?

Mr. Lucas: There are studies. I have not read them carefully because it is outside of my area of competence.

Mr. Elston: I am wondering if there is anything in your line of expertise dealing with factors of drugs. Perhaps you can comment quickly on that. We are dealing with a related subject, I know, and I am concerned about the incidence of drug-related

accidents and what we can do to deal with that as well.

Mr. Lucas: In 1979 we did a study in which we looked at every driver who was killed in Ontario. We did a complete drug analysis of them. I think it is fair to say we found that compared with alcohol, everything else paled into insignificance. The only two drugs that may occur sufficiently often to warrant further concern were cannabis and Diazepam, which is valium. In particular we could establish that cannabis was present in the blood of three per cent of the drivers who were killed. You can compare that with alcohol, which is in 50 per cent or more. In many of those with cannabis, alcohol was also found, so that our main problem is alcohol without question. The drug problem is much smaller and is probably related to cannabis.

Mr. Elston: The test results on the ALERT machine are not associated in any way with weather conditions in terms of changing the calibration from a dry area--for instance, inside--to a damp, cold area outside, or a warm atmosphere? There is no effect on weather?

Mr. Lucas: No. Actually the device carries its own environment because it has a heater in it that heats the detector to 350 degrees Celsius so that it is well above what it is either in a room or out in the open. The only effect of cold is it does have an effect on the batteries. You just can't use them as long. As long as you can get a reading at all, it will--

Mr. Elston: These are charged every night, I presume.

Mr. Lucas: They are normally charged every night when they are not on the road.

Mr. Elston: They can then be used for a period of three or four hours or five hours, or whatever?

Mr. Lucas: Yes.

Mr. Chairman: May I thank Mr. Lucas for his assistance and technical advice. Shall we move on with consideration of the bill? Are there any amendments to section 1?

On section 1:

Mr. MacQuarrie: Mr. Chairman, after considerable discussion the minister proposed an amendment to section 1.

Mr. Chairman: Mr. MacQuarrie moves that section 30(a) of the act as contained in section 1 of the bill be amended by renumbering subsections 1 to 11 as subsections 2 to 12 and by adding thereto the following subsection:

"(1) A police officer, readily identifiable as such, may require the driver of a motor vehicle to stop for the purpose of determining whether or not there is evidence to justify making a demand under section 234(1) of the Criminal Code (Canada),"

and that the internal references be revised accordingly.



5:30 p.m.

Mr. Conway: I would just like to raise a small point with the amendment with which I have absolutely no difficulty at all. This provides me with an opportunity in the presence of the Solicitor General to raise a concern I have about what some people might think is a minor point. Given what we are doing here, I am wondering if the Solicitor General might give me an undertaking.

I have long and personally objected to special licence plates in this province, for politicians more than anybody else. I understand judges have them or whatever.

Mr. Haggerty: You are not suggesting they are exempt from those.

Mr. Conway: I am not suggesting they are exempt, but I am suggesting that the police officers in this province obviously have a special interest in licence plates to do with their work. It is a way of identifying vehicles, is it not? People who drive around the province advertising themselves through MPP 102--

Mr. Chairman: How about 111?

Mr. Conway: Whatever. I wonder if the Solicitor General might give us an undertaking, to keep it straight, honest and antiseptic. I am happy to have the police officer readily identifiable, but I always have been a little concerned about certain classes of people being perhaps just a little too identifiable in a subtle way through their cars and licence plates in particular.

Will the Solicitor General give an undertaking that he will instruct the Minister of Transportation and Communications (Mr. Snow), given the import of this legislation, to stop issuing special licence plates to members of this assembly, if to no one else, just so this great important cause on which we are now embarked will be administered in a very even-handed way?

Mr. Renwick: Are you concerned with the leniency or the severity of it?

Hon. Mr. McMurtry: I think it would be presumptuous of me. I think this is a matter all members should have an opportunity to make representations about.

Mr. Mitchell: Just a very short comment with respect to Mr. Conway's suggestion, I tend to agree with him. It is difficult not to agree with his august words. However, I would ask does he then imply that he should single us out? I do not have one, but should he single us out when the province as a whole has the opportunity to order special licence plates with specific letters and numbers, with the exception of some that might be considered obscene?

Mr. Conway: I respectfully submit to my friend from Carleton and to the committee as a whole that what is intended and

accomplished by virtue of our special licence plate is the advertisement of an office.

That concerns me because I think it can place an additional consideration, if not a pressure, upon law officers who have these very important duties to perform. I have no difficulty at all with the highway department allowing citizens to have licence plates based on their initials or whatever, but it does concern me no little bit that certain rather important public offices can be and are advertised through the licence plate. Given what we want to do in this legislation, I think it would be wholly consistent with the unanimous spirit of support for this great cause that we would at least take ourselves out of any real or perceived conflict with respect to the administration of the RIDE program.

Mr. MacQuarrie: It takes a rare stretch of call it imagination if you will to attach this sort of statement to the content and the objectives of the bill. I admired the presentation.

Hon. Mr. McMurtry: I will give you an undertaking that I will not use a special licence plate.

Mr. Roy: Who can miss you with your chauffeur?

Mr. Renwick: I certainly accept this amendment. I think it is in line with the ongoing discussions we have had in the committee about the bill and I am delighted that it removes the capricious--if I can adopt Mr. Lucas's term--element in the stop and requires the police officer to have a purpose in mind when he makes the decision. I am also pleased that it is limited to section 234.1 of the Criminal Code of Canada. I have no hesitancy in welcoming the amendment.

Mr. Chairman: All those in favour of Mr. MacQuarrie's amendment will please say "aye."

Those opposed will please say "nay."

In my opinion, the ayes have it.

Motion agreed to.

Mr. Chairman: Are there any further amendments in section 1 which would be the renumbered subsections 2 to 12. Are there any other amendments?

Mr. Roy: Don't you have to bring forward amendments in subsection 2?

Hon. Mr. McMurtry: We are just dealing with section 1.

Mr. Roy: No, if you look at subsection 2 where it says, "Where upon a demand by a police officer under section 235.1 of the Criminal Code..." You are talking about section 234 only of the Criminal Code.

Mr. Renwick: That's right. That is one of the good things about the amendment, that it is limited to 234.1.

Mr. Chairman: Gentlemen, may I intercede? Let's use this time usefully. It is quite apparent, this being private members' day, that we are going to have to break out of here in nine minutes. We will not be finishing this bill by six o'clock.

Mr. Renwick: Yes, we will.

Mr. Chairman: Do the Liberals believe that we will be finishing this bill by six o'clock?

Mr. Roy: We have some comments and he has some further amendments. It will not take that much more time but we want to say certain things on those.

Mr. Chairman: That is what I am leading to. It appears that we will not finish by six o'clock. When we go back in, can we ask the government House leader to request that we recommence sittings at eight o'clock to finish this matter tonight?

Mr. Mitchell: If I may, speaking for our side of the committee, I have no objections with asking the permission of the House leader that we sit. However, I must reiterate that it was clearly indicated, at least to me, yesterday that about 15 minutes would be required of the witness we heard today and then we would get into clause by clause. Having said all of that, if I have the assurance--and I do so only on the assurance of the other members that they agree that we will finish clause by clause tonight. I suppose I am speaking for myself.

Mr. Chairman: In fairness to those members of the Liberal ranks who are not used to this committee this year, we have had a long history of definitions of the word "agreement" and the defalcation and otherwise of such. That is why there is a fairly legitimate concern by Mr. Mitchell. However, having said that, there appears to be some consensus in the Liberals to speed on after eight o'clock to conclusion. Is that correct? Is that the consensus?

Mr. Mitchell: I think we require a motion on that, Mr. Chairman, just to be sure. I do not wish to speak for everyone.

Mr. Chairman: It is the consensus? Can you come back, Mr. Minister, and others? Fine, thank you. Shall we carry on then and we will break at 5:45 to reconvene at eight o'clock and to complete this matter. I think we are in the midst of the minister replying to Mr. Roy's comment on the section of the Criminal Code.

Hon. Mr. McMurtry: I will ask Mr. Segal to respond to the remark expeditiously.

Mr. Segal: The new section 1, paragraph one, permits the stopping only for purposes of a roadside screening demand where there is no evidence to show that the driver is driving improperly. However, once that driver is by the roadside or if a police officer properly acting comes across a driver who is driving poorly, and jumps right to a section 235 demand leading to a breathalyser result, that officer should still have the power to suspend the



person's licence for 12 hours. We have to distinguish on the one hand between the power to stop where there is no evidence of poor driving and the ability to suspend. The ability to suspend occurs on the happening of a number of events, one of which is a reading of over 50 on a breathalyser where there has been a section 235 demand but no 234.1 proceedings.

5:40 p.m.

Mr. Roy: So what you are saying basically is that in subsection 1 you are making a demand under 234.1.

Subsection 2 says you have the right to stop someone to see if there is any evidence to justify a demand under 234.1, and then you go on to subsection 3, which is the original 2, saying he should be allowed, as well, if he moves to a demand under section 235 to request it.

I see. I am sorry, with the confusion of the sections here in the bill--I understand what you are doing.

Mr. Chairman: Are there any further amendments to section 1?

Mr. Roy: One comment on subsection 3, and I have made it--

Mr. Chairman: Is it the new or old subsection 3?

Mr. Roy: It is the old subsection 3, which would be the new subsection 4.

I would like to put on the record again, Mr. Chairman, and I have talked about this before in the presence of a witness we had here the other evening, and I have talked about it to the Solicitor General as well, that I am very concerned about the fact that under the new subsection 4 a person who is charged for refusing a demand under 234.1 or 235 and is charged--he has not only refused, he is charged--that person is presumed to be innocent, and in spite of the fact that he is presumed to be innocent, the police still may request him to surrender his licence.

Second, it may turn out that he is innocent because the Criminal Code says that a person may have a reasonable excuse for not providing a sample, and it may turn out that he has a reasonable excuse. In spite of that, he is going to be punished under this section.

I perused the other statutes which have been brought before us here, from Manitoba, BC and elsewhere, and I do not see that sort of provision. British Columbia has some provision about where a person refuses to surrender his driver's licence, but it does not talk about refusal to provide a breath sample. I understand that you are concerned about the fact an individual refuses and the police are concerned that upon refusal, they do not like the idea that he is going to proceed on and may get involved in a motor vehicle accident; but I am really concerned about the individual who on principle is entitled to refuse, has a reasonable excuse and is punished under that section.

I really think we should think this over here. I understand there is a practical element to it, but it seems to me there is a serious conflict with punishing someone who is presumed to be innocent under our Criminal Code and is entitled to go under the Criminal Code, to have a reasonable excuse to refuse.

Hon. Mr. McMurtry: Again, a policy decision. Somebody who is maybe borderline is not going to be charged with impaired driving and lose his licence for 12 hours. Someone who simply refuses, the police officers feels is impaired, the idea of that person, whether he is charged with impaired or refusing, driving his car away six hours down the road and being involved in an accident, it seems to be an unwise situation to require that the borderline impaired leave the highway but permit somebody who is more than borderline impaired to drive. That is a difficult choice.

Mr. Roy: As I understand the workings of your program, many people who will be asked to surrender their licences will not be charged. In this particular case there is no incentive for the individual to refuse; he is going to end up being charged. If he was not charged, I could really--he is charged under section 234 or 235, which has all the penalties of an impaired driver, all the penalties that follow.

In spite of that, you are still charging him over and above that. He is presumed to be innocent, and he may well be innocent, have a reasonable excuse, and he is punished. I think that is wrong. I think in principle that is wrong.

Hon. Mr. McMurtry: In principle, I do not agree with you because you are talking about a highly exceptional case. What it means then is anybody who is charged with impaired who refuses to blow would not necessarily lose his licence, so you would have the rather ridiculous situation that somebody has refused to blow, is charged with impaired driving, ends up three or four or six hours down the road driving again, kills somebody, and you say, "You took my neighbour off the road because he was borderline; this guy was more than borderline and he is permitted to go." That would be the usual situation.

Mr. Roy: With respect, again, in practical terms, if the--

Hon. Mr. McMurtry: That would be the practical situation.

Mr. Roy: No, no. In practical situations, if the police feel that this individual who has refused to blow in fact has signs of impairment, he is charged with impaired driving, he is charged with refusing to blow, and I certainly do not see a police officer in those circumstances giving this guy's keys back.

Hon. Mr. McMurtry: Mr. Segal might also want to add something.

Mr. Segal: I will just speak with Mr. Roy to an analysis of the four provinces, their statutes.

Mr. MacQuarrie: I would move section 1, Mr. Chairman.

Mr. Chairman: No. I do believe he is in the midst of speaking, and the minister has directed it; but I do think we are going to have to break off. Mr. Segal cannot be given proper time, and we must break for private members' votes.

We could adjourn now, reconvene at eight o'clock in the midst of Mr. Segal's first sentence.

Mr. Renwick: When do you expect that we will get leave to sit tonight?

Mr. Chairman: I have things in motion right now. The government House leader should announce that.

Mr. Renwick: I was just wondering whether Mr. Roy expects us to sit here from eight o'clock until 10:30 at night just for the purpose of filling in time. I do not mind him making his points. Making his points and having the ministry respond is fine, I do not have any problem with that, but to engage in long argument at this point in the deliberations on the bill, it seems to me we all have other intense obligations of varying kinds, particularly the social ones, and we would not want to interfere with those unduly.

Mr. Elston: When you raise questions about certain clauses in the bill, if it is not--

Mr. Renwick: I was not speaking to you, Mr. Elston.

Mr. Elston: I understand, but you are speaking to the committee.

Mr. Renwick: I do not know what the Liberals' intentions are with the bill. I do not know whether they are trying to justify their turnaround in now supporting the bill by a great deal of rhetoric or what.

The committee recessed at 5:49 p.m.





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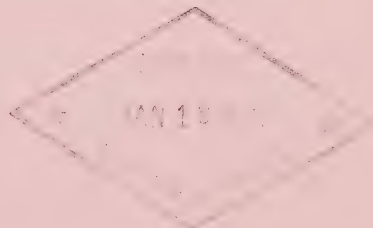
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

BILL 178, HIGHWAY TRAFFIC AMENDMENT ACT

THURSDAY, DECEMBER 17, 1981

Evening Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Treleaven, R. L. (Oxford PC)  
VICE-CHAIRMAN: Williams, J. (Oriole PC)  
Andrewes, P. W. (Lincoln PC)  
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Mitchell, R. C. (Carleton PC)  
Piché, R. L. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Swart, M. (Welland-Thorold NDP)  
Wrye, W. M. (Windsor-Sandwich L)

Clerk: Forsyth, S.

Also taking part:

Conway, S. G. (Renfrew North L)  
Haggerty, R. (Erie L)  
McMurtry, Hon. R. R.; Attorney General and Solicitor General  
(Eglinton PC)  
Roy, A. J. (Ottawa East L)

From the Ministry of the Solicitor General:  
Segal, M., Counsel, Crown Law Office Criminal

From the Ministry of the Attorney General:  
Stone, A. N., Senior Legislative Counsel



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 17, 1981

The committee met at 8:03 p.m. in room No. 151.

HIGHWAY TRAFFIC AMENDMENT ACT  
(concluded)

Resuming consideration of Bill 178, An Act to amend the Highway Traffic Act.

Mr. Chairman: When we adjourned, Mr. Segal was in mid-sentence giving an explanation.

Mr. Segal: Thank you, Mr. Chairman. I was about to answer Mr. Roy's question as to why the licence should be taken following a refusal to blow under one of the two sections. While it is true that Manitoba has tied licence suspension to the Alert reading, the three other provinces, British Columbia, Saskatchewan and Alberta, in my reading of that legislation, have provided that the officer can take the licence when the driver refuses to blow.

The scheme in those three provinces, as I see it, is that the officer is permitted to obtain the licence on a purely subjective ground, but the driver is permitted to regain the licence if he volunteers to take a breathalyser test, which is below a prescribed standard, varying in each province. It is true there is nothing mentioned about refusal, but if you look at the opening clause in each of the three provinces' legislation, you will see it is a case of take now and ask questions later.

In the bill that is before you, the Criminal Code standards of reasonable suspicion and reasonable and probable grounds have been preserved. One can go no higher, in my own view, than the Criminal Code standards. One could have gone lower per the standards in British Columbia, Alberta and Saskatchewan, but it was thought by some that a balance between the two extremes or the two tests might be appropriate, especially having in mind that there are some people who refuse to blow, who are reported to crown attorneys and through the police, who are obstreperous and are substantially impaired. Those would be my remarks on why the balancing.

Mr. Roy: The only legislation that applies to us is the Manitoba statute and the BC statute. I see nothing in the Manitoba statute doing that. I think you have admitted that. In the BC statute I see nothing either. Maybe you can point out to me where you see under the BC legislation that upon refusal the licence is suspended. Where do you see that under the BC legislation? Have you got it there?

Mr. Segal: Yes. I have the same copy you have. Section 203(1) says: (1) "The driver's licence of a person whose venous and blood contains not less than eight parts of alcohol to 10,000 parts of blood is subject to suspension." (2) "A police officer may at

any time request the surrender of a licence." That is purely subjective. The fellow does not even have to refuse, from the way I read it. If he refuses, it could even be worse for him.

Mr. Roy: You are quite right, but the difference is that the BC legislation came into force, I think, before the small machine, the Alert. In fact, one could lose his licence in British Columbia, but not lose it on the basis of his blowing. There was no Alert process in British Columbia at the time this was brought in. In British Columbia, the individual was not charged with refusal to blow.

What bothers me in this particular case is that in the situation where the police officer feels that the individual who is refusing to blow is impaired, an impaired charge is laid. As I understand the process, having practised a limited amount over the last few years, both for the crown and the defence, once there is a refusal to blow by the individual and the symptoms are there, a charge of impaired driving is laid and that is supported by certain provisions of the code where one could make a presumption because a person refused to blow. Then a further charge of refusing to blow is laid as well. Generally, when the charge of impaired is laid, the keys are not given back to the individual nor is he told to go home. Usually a relative is called in or he is kept in the clink overnight or something like that happens.

Hon. Mr. McMurtry: If I might interject, this very provision is an opportunity--for example, one of the problems police officers face is worrying about people getting back in the car. Knowing their licence is suspended for 12 hours, there is less worry about policing them, assuming they are well and can find their way home. What you are proposing would probably lead to more incarceration because of the concern about driving while they are in that condition. That is the other side of the coin in any event.

Mr. Roy: What I was trying to say, and I understood your point, was that when the police charge a guy with refusing to blow or refusing the demand and are concerned that some five or six hours later this individual is driving and gets into an accident, then it is not consistent and doesn't make sense. Generally, the police do not do that. If they have reason to believe that an individual's faculties are impaired, they will not give him his licence back. They call in a relative or keep him overnight or whatever.

I am really bothered by a section of this particular act where an individual can be charged with being impaired. He will be charged with refusing to provide a breath sample. He is presumed innocent, but he will lose his licence under this provision when at a later time he will be found innocent. I am suggesting there is no other statute in Canada. British Columbia, Manitoba and Saskatchewan do not have similar provisions where the individual is charged with something else, over and above losing his licence for 12 hours. That is what I am suggesting.

I do not want to be repetitious; I have made my point. What I am trying to say is that in principle I do not think that is necessary. It is not as though you are encouraging people not to

provide a breath sample because if he refuses you charge him. He is then charged with two things; he is charged with being impaired and with refusing to provide a breath sample. To take away his licence over and above that seems to me a bit much.

Mr. Mitchell: Mr. Chairman, I understand that there are possibly some questions with a couple of clauses under section 1. If they could be identified, perhaps we could approve the clauses under section 1 and at least get them out of the way.

Hon. Mr. McMurtry: I do not think there are any more submissions on section 1.

Mr. Elston: There are no more amendments, but I have one comment that I would like to bring up concerning Mr. Borovoy's point about recourse.

Mr. MacQuarrie: I would like to move section 1, as amended.

Mr. Roy: No. He is making a comment on section 1.

Mr. Chairman: Mr. Mitchell has the floor.

Mr. Mitchell: Mr. Chairman, if it is a comment, certainly I do not object to the comment being made as long as we are proceeding. That is really my concern.

Mr. Roy: What the hell do you think we are doing here?

Mr. Mitchell: Only on our commitment, that is all.

Mr. Conway: This place is beginning to take on the same tone as this bill.

Mr. Elston: I have a couple of things to say about the point raised by Mr. Borovoy that is of some concern. Quite frankly, I have not got anything in the shape or form of amendment, because I do not really know how you address the problem that was raised there, and that has to do with the major concern that we have that there is a suspension taking place outside the usual limits of our jurisprudence, which would allow some sort of a process through the legal system before a licence was removed.

That still bothers me to a great extent, and I do not really know, from a practical point of view, how you would even address the difficulty that a person would have.

Hon. Mr. McMurtry: I agree with you, Mr. Elston. This is a concern we have all had about this legislation, and we have balanced what we thought was the public interest. I agree there is no practical way to resolve it, outside the usual process of challenging of a police officer in court or, if there is evidence of malicious or capricious behaviour, through the normal civil procedure, complaints procedures and what not.

Mr. Elston: I understand what you are saying, but that still does not address the secondary problem there, which is what



happens with the fellow who then finds himself out of pocket, even if it is only \$50 or \$70 or whatever.

The point I was about to make was that if we are to proceed later in the new year, bringing this material and this bill and the results of this bill back in front of this committee, particular emphasis should be placed upon any study that has been conducted prior to its coming back here of dealing with the situations where there was some sort of intention expressed by the individual who felt aggrieved by this whole process of addressing his problems, and how he thought he might be best satisfied with it, and seeing whether there is any sort of mechanism that can be used.

I know of none right now that can be conveniently open to the individual to seek redress, other than maybe laying a charge. But there is no prosecution involved; so there is no malicious prosecution, there is no arrest. I do not know how anybody would ever use any sort of a court procedure right now. Maybe that is something we should address to some extent, and we should address it when it comes back here later in the new year.

Mr. Chairman: Mr. Elston, while you are on it, and you slightly referred to it, do you want to refer to your last amendment? It is slightly out of order, but you are on the topic. Do you want to mention that?

Mr. Elson: No. I think we should deal with them in order.

Mr. Roy: I would just like to put on the record as well that I have certain reservations. I think you get good police work and effective enforcement when there is--there has to be something there when such wide powers are given. I have no doubt that 99.9 per cent of the enforcement will be effective and proper, but sometimes the bad press and everything else is because of a few failings here and there. I really think the legislation should have something.

8:20 p.m.

I am not convinced that what Mr. Borovoy suggested the other day is practical, but possibly, when we come back to review the legislation in six months, we should look at something that would be there on the record to be some form of--I do not call it a deterrent against the police; I would call it a safeguard, there on the record so that the citizen who feels he has been abused by this process has some recourse.

Mr. Chairman: Are there any other comments with regard to the new sections 3 to 12 inclusive?

Mr. Roy: I just have one question, and I should have asked it of Mr. Lucas. Is he here?

Mr. Chairman: No.

Mr. Roy: As I understand that machine--I did not get to see it--there is a "warn" sector in it and then there is a "fail."

Mr. Chairman: There are three lights.

Mr. Roy: Is there something in between "warn" and "fail"?

Mr. MacQuarrie: "Pass," "warn," "fail."

Mr. Roy: I see. There is no degree between--when he was talking about "warn" is when he would gauge it at between 0.05 and 0.053, or something along that line, and then "fail" is when you are up at 0.1 or something along that.

Mr. Chairman: It is 0.08. I took it that it was below 50, 50 to 80, and 80 and up.

Mr. Segal: My understanding is that, out of an abundance of caution, it is calibrated at 100 because it is not as sophisticated a device as the breathalyser. Because its results may cause a breathalyser test to be taken and a person to be taken some miles, it is set at 100. The mid-range is automatically one half of whatever you set the "fail" at. So if it is 100, it is 50. It may be 50 to 53.

Mr. Elston: Right now, our enforcement level that was the 0.08 law is, as I understand it, roughly 0.1. That is the same area. This one will be enforced at 0.05 to 0.053. It will be moving up to 0.07.

Hon. Mr. McMurtry: Yes.

Mr. Chairman: I think he also explained the other day that it was set at 100 because, if they are asked to go into the station to blow, the time interval--there is an allowance that he would still be above 0.08. Whereas if it came in at eight, the time interval could be down into seven or six. That is why they also set it high.

Mr. MacQuarrie: I would move section 1, as amended.

Mr. Chairman: May I take them slightly individually. Might I ask if new subsections 3 to 12, inclusive, carry? Carried.

Shall section 1, as amended, carry in its entirety?

Section 1, as amended, agreed to.

On section 2:

Mr. MacQuarrie: The ministry brought forward an amendment which it is prepared to withdraw in favour of an amendment suggested by Mr. Elston.

Mr. Elston: I think it is shown as the second page in the group that I was handed.

Mr. MacQuarrie: The amendment that was brought forward by the ministry is the second sheet of the four-sheet handout that we all received.

Mr. Mitchell: What is being proposed in the second amendment?

Mr. MacQuarrie: The amendment that is being withdrawn in favour of sheet three, which was an amendment proposed by Mr. Elston.

Mr. Chairman: Mr. Elston moves that section 189(a)(1), as contained in section 2 of the bill, be amended by inserting, after the word "officer" in the first line, the following words, "in the lawful execution of his duties and responsibilities," so that the section will now read:

"A police officer, in the lawful execution of his duties and responsibilities, may require the driver of a motor vehicle to stop and the driver of a motor vehicle, when signalled or requested to stop by a police officer who is readily identifiable as such, shall immediately come to a safe stop."

Mr. Roy: Can I ask a question, if you do not mind? Why do you have the words "safe stop" in the motion? Why do you not just put "stop"?

Hon. Mr. McMurtry: First of all, you do not just stop. I have always assumed it was coming to a reasonable stop and not just jamming on your brakes with the result that you may get clobbered from behind.

Mr. Roy: But there is something about the word "stop" that is well understood in the legal vernacular that when you are asked to come to a stop you assume that it is reasonable. Saying "safe stop" sounds like something that has been cooked up a little.

Mr. Chairman: In fairness, I might point out that it was raised by one of your fellows. I believe the Solicitor General (Mr. McMurtry) took the position that stop meant stop and that there was not much of a problem, but it was one of your fellows, and I cannot remember who he was, who wished to dig into that word "stop" over and over again.

Mr. Elston: I think we discussed the word "safe." I think that was raised by Mr. Thomas as to the meaning of "safe" and whether that was one of the operative words.

Mr. Mitchell: Perhaps I can help the discussion. I raised the question of "safe stop" yesterday, because I said I believe it is in the Highway Safety Act or something.

Mr. Chairman: It was Mr. Thomas who took that on at some degree.

Mr. Roy: But he raised it because he did not understand what the heck was a safe stop. He raised it as a problem, saying that a policeman could say the citizen did not come to a safe stop. I have never seen the words "safe stop" in any statute. I was wondering if there was a particular reason for having it in there.

Mr. Mitchell: It is just my understanding that it is in



the act. I do not know.

Hon. Mr. McMurtry: I thought it would be fair from the standpoint of the motorist's view. If you want to take it out, it does not matter to me.

Mr. Roy: In the process it just does not make sense to talk about a safe stop. When you talk about a stop, you are talking about stopping.

Mr. Mitchell: If that is the wish, we would be quite prepared to move an amendment.

Mr. Williams: I think, as the Solicitor General has stated, it gives somewhat the benefit of the doubt to the motorist who is being asked to stop his vehicle by a police officer. This qualifier as to the type of stop that the motorist is expected to engage in, if he has to drive maybe a half a block further along to avoid traffic coming up from behind him or whatever other circumstances may prevail at the time, does give a bit of latitude to the motorist without him being accused of having proceeded beyond the point where he should have stopped.

I think it is important that the degree of latitude be given to the benefit of the motorist who is being asked to stop in the first instance. It is quite important that the provision be there and that the qualifier remain.

Mr. Mitchell: I believe that was the argument that Mr. Thomas used, that it would allow for the guy who obviously could not stop if he is in the middle of a bridge somewhere, or something like that, where he has to proceed and be able to clear off the bridge properly. In that way, that is a safe stop and he could not be considered as trying to avoid the police officer or whatever.

Mr. Roy: Again, with respect, Mr. Thomas suggested that was not a very good term. As I understand his evidence here, he said that it could be argued. In fact, I would put it the other way around. The safe stop would be more of an asset to the police than it would be to the motorist. Frankly, all the motorist has to do is say, "I stop some place here," and the police would say he did not make a safe stop. His stop was not safe.

How can that safe stop be any help to the motorist? I do not understand that. I do not think it is any big deal, but I am trying to see legislation drafted and enacted as efficiently as possible. You used the word "stop" earlier. You said, "The motor vehicle when signalled is requested to stop." It is not requested to "safe stop." It is requested to stop; so why should it be "safe stop"?

8:30 p.m.

Mr. Elston: Perhaps we should ask somebody what it means in legislative drafting language.

Mr. Stone: Mr. Chairman, I do not think there is any technical meaning. I think the meaning is being picked up. It was put in as a drafting point when the question was raised, "Is it

permissible for the person, if he has to stop, either to jam on his brakes in the middle of the road or can it be objected to if he is required to go 200 yards down the road before he can come to a safe stop?" This was just there to resolve the question.

Mr. Roy: You are suggesting to me that the word "safe" will be more of a defence to the motorist than it will be to the enforcement authorities? Is that what you are saying?

Mr. Stone: I think in either case you can have an unreasonable judgement. It is meant to put it in between.

Mr. Roy: I just raised it. If everybody is satisfied with it, fine.

Mr. Chairman: We have in front of us the motion of Mr. Elston on section 2.

Mr. MacQuarrie: I have a further amendment to section 2 that was put forward by the minister.

Mr. Chairman: Yes. Can I carry Mr. Elston's amendment first, then we will go to yours? All those in favour of Mr. Elston's motion had better put their hands up. It is the easiest way. All those opposed? Carried. Things are looking up.

Are there any further amendments to section 2?

Mr. MacQuarrie moves that section 189(a)(3), as contained in section 2 of the bill, be amended by inserting, after "person" in the second line, "wilfully."

Is there any discussion on that?

Mr. Elston: I have no difficulty with the word "wilfully." I have a wee bit of a disagreement with the Solicitor General. I raised it with him last night. It is in terms of the rest of the section in that it has to deal with the word "shall" in the fourth line of that sentence which I thought might be rectified by making another amendment to that section.

I was not even going to have "may"; I was going to insert the words "up to" in the fifth line of the section. Then it would read, "An order suspending the driver's licence of that person for a period of up to three years," which would obligate the court to install a suspension. I am quite open to argument as to whether you put a minimum time of suspension or whether it be a sliding scale to a maximum.

I have concerns about the discretion question. We do have the officer with discretion on the scene of the reduce impaired driving everywhere situation where he can make a determination in his judgement of the abilities. I would like to point out again that the nature of each case where a person is pursued may require a different sort of latitude in terms of installing a suspension. Those are my comments. I think the word "wilfully" is a good step.

I am not moved by the argument made by the Deputy Solicitor

General the other day when he said that "wilfully" would be the key word and would determine whether the section would operate reasonably against the person who drove on a little too far. I think that by forcing an automatic three-year suspension we are going to have a judge forced into a position where he will say, "Maybe I will expand 'wilfully' so that three blocks is not enough to take a three-year suspension." I think we may be taking away from the section by forcing an automatic--

Hon. Mr. McMurtry: I think if we set it up to three years, we would not need the section at all, because they have that authority now. The truth of the matter is--again, this will all have to be assessed; I am not attempting to sound like an absolutist on it--that it is our view the courts have not been severe enough with respect to suspensions in these cases.

It was a deliberate policy decision to make it a minimum of three years, and if we add the word "wilfully," it adds to the burden of proof. If a judge wishes to avoid in an appropriate case harsh consequences, I don't think it takes a great deal of ingenuity to avoid these consequences. But there have been a number of high-speed police pursuits, very reckless driving where people have been convicted of dangerous driving, criminal negligence, and they end up with suspensions of six or nine months. I don't think the courts have responded appropriately to this problem.

Mr. Conway: On that point, Mr. Chairman: I would like to get the Solicitor General's opinion. He has touched on it in that response. We were told by Mr. Thomas that by failing to give the discretion to the courts, we run the risk of forcing a result that is quite contrary to the intention.

Hon. Mr. McMurtry: I think it is unlikely, but I could not say it will never happen. This is another reason to assess the legislation as we go along. I agree that argument can be made, but I think on balance it is not likely to happen.

Mr. Conway: My colleague the member for Ottawa East (Mr. Roy) informs me that I misrepresented the testimony of Mr. Thomas, that I was unfairly recollecting Mr. Roy's testimony and not that of Mr. Thomas.

But this concerns me. I have no experience with the courts, but it is clear what you want to do here. If those who have experience with the courts tell me that by leaving no discretion--and I must say a rather passionate intervention was made by our friend the member for Cochrane North (Mr. Piché), who also drew our attention to the lack of discretion in this particular subsection--if it has the result of going in the other direction from the stated aim of the sections written, I would not feel very fulfilled.

Hon. Mr. McMurtry: We have considered that very carefully, and no one can be certain about it. We think it is unlikely. As Mr. Lucas discussed in the other context, what we are attempting to do is to emphasize creating a deterrent rather than simply a tougher penalty.



Mr. Roy: I understand what you are saying, but the fact remains that I am very much afraid, when you take away from the courts the discretion, the flexibility, what happens is that, except in extreme cases, they are going to avoid making a decision. The court has to be satisfied according to the section.

Hon. Mr. McMurtry: I think the court would be irresponsible in a clear case to do that.

Mr. Roy: But the court may face a position where, in one of those bad high-speed chases, the accused is charged not only with something under this section but also with dangerous driving or criminal negligence, and the court has the discretion to suspend the licence for--up to what time? Unlimited? It can suspend the licence for five years if it wants to, can't it?

Mr. Segal: Criminal negligence causing death, up to life. Criminal negligence causing bodily harm simpliciter or dangerous, up to three years' suspension.

Mr. Roy: So this suspension could be over and above whatever the courts suspended under the Criminal Code. You don't say so, but it could be, couldn't it?

Hon. Mr. McMurtry: There could be only one order of suspension.

Mr. Roy: Isn't there a possibility that one might be convicted of something else along with this and receive a suspension over and above it?

8:40 p.m.

Hon. Mr. McMurtry: Are you talking about concurrent suspensions or consecutive suspensions? Courts face this problem every day of the week with respect to incarceration.

Mr. Roy: I am saying if you take away from the flexibility of the courts, I am convinced it is only going to be in the harshest and most tough cases that they are going to invoke the provisions of this section, because they know that when they invoke them, it is automatically three years.

Hon. Mr. McMurtry: It is a judgement call. I respectfully disagree, but--

Mr. Roy: All I am saying is that, generally speaking, the only time you impose this mandatory term with no flexibility is when someone is convicted of a third offence for impaired driving or something like that. When you get to your third offence, I think you should suffer the consequences. But in this case it could be a chase that is relatively serious, and you still have to go three years. I am saying you shouldn't take away from the flexibility or the discretion of the court.

Mr. Mitchell: I was just wondering, not being a lawyer, being one of those outnumbered on this august panel, Mr. Roy raised the possibility of two or three charges resulting from a specific

situation. Would it be normal procedure to affix the suspension for one and then the suspension for the other, or would the courts apply the suspension resulting from the most serious charge?

Hon. Mr. McMurtry: In my view, there would be only one order of suspension.

Mr. Mitchell: So it would be based on the most serious charge, I would imagine.

Hon. Mr. McMurtry: Yes.

Mr. Elston: I was wondering if they would pursue the Highway Traffic Act offence, if they were also looking at criminal negligence. This one might be the extra lever, "While you go with the plea on the criminal charge, we will pursue the Highway Traffic Act offence," which again eliminates--

Mr. Conway: That does seem an interesting point. I want to be clear on this. In the case of multiple charges, the court might find itself in a position--the Solicitor General just said this--where it would likely take the most serious charge and deal with any suspensions that flowed from that. You could have the situation where the court might decide to go to the most serious charge in which, as I take it, they have some discretion on suspensions.

Hon. Mr. McMurtry: Yes.

Mr. Conway: That is ingenious. Maybe Mr. Piché and I have had our concern answered in a most peculiar way.

Mr. Piché: I had my concern answered in this way, although maybe I don't feel as I suppose I should. What we are told tonight by the Solicitor General is that this exists right now. A judge can go from one day to so many years when we have a case like that. I am wondering now if maybe we shouldn't consider withdrawing the amendment you put in and trying for this three years. Obviously the meat of the act is to bring in something that is not happening right now as far as the courts are concerned.

Mr. Elston: Quite reasonably, I think we had only one amendment. I was speaking towards the reasonableness of Mr. MacQuarrie's suggestion and indicating that I did have a concern with the section. Having spoken with the Solicitor General earlier, I knew of his concern. I thought we might reasonably proceed to discuss the whole thing at one time rather than continue with another amendment. So there are none there at the moment.

Mr. Chairman: The only amendment we have is that the word "wilfully" be placed after the word "person" at the end of the second line.

If there is no further discussion, shall the amendment of Mr. Elston carry? Carried.

Interjections.

Mr. Chairman: Sorry, you are correct. All those in favour of Mr. MacQuarrie's amendment? Carried.

I am shaking up my different ways of doing. I am not used to this unanimous consent. Mr. Elston?

Mr. Elston: I would say "nay" but you did not ask for it.

Mr. Chairman: Excuse me, just for the record, all those against that amendment of Mr. MacQuarrie's had better put up their hands, please. I think we should do this properly. Instead of being carried the informal way, all those in favour of Mr. MacQuarrie's motion, please put up their hands. All those against Mr. MacQuarrie's motion, please put up their hands.

The motion is agreed to, 7 to 2.

Mr. Elston: I have a question about subsection 4, where it reads, "In a proceeding for a contravention of subsection 2..." I believe that should be subsection 1, should it not? It is subsection 1 you are contravening rather than subsection 2. Subsection 2 is the installation of a penalty, an offence for an infraction of subsection 1. I believe that should be amended. I mean, you can't offend in subsection 2; the offence is in subsection 1.

Hon. Mr. McMurtry: That should be subsection 1, yes.

Mr. Elston: I would move an amendment then to section 189(a)(4), as it is shown in section 2.

Mr. Chairman: It is not easy to find your way there, is it?

Mr. Elston: That's right. It would substitute the number "1" in the first line and delete the number "2."

Mr. Chairman: Are you satisfied with that way to get to it?

Mr. Mitchell: That is in section 2, subsection 4?

Mr. Chairman: No, because 4 is really a portion of section 189(a). That's the difficulty in getting to it. Section 2 really has no subsections. It is paragraph 4. Mr. Roy, can you get us to it in a more satisfactory fashion? Is that what you are intending to do?

Mr. Roy: No, no. I had some comments to make about this morning.

Mr. Chairman: May we get this straight, the proper delineation?

Mr. Mitchell: Section 189(a), paragraph 4, where it has in brackets "2" the amendment is moved to change that to "1."

Mr. Chairman: Mr. Elston moves that subsection 189(a)(4),



as contained in section 2 of the bill, be amended by inserting, in place of the number "2" in the first line, the number "1."

Do you want to speak to the motion, Mr. Roy?

Mr. Roy: Not to the motion.

Mr. Chairman: All those in favour of the motion raise their hands, please. All those opposed to the motion raise their hands. Carried.

Mr. Roy: In the section that has just been passed as amended there is a warning that follows. Shouldn't that warning read that "upon conviction of the offence with which you are charged, in the circumstances indicated therein, your driver's licence shall be suspended for three years"? If you are convicted of--

Hon. Mr. McMurtry: There are two different offences, you see. There is the offence of failing to come to a safe stop and then there has to be an additional finding, that you wilfully continued to avoid police, for the mandatory suspension to come in. In other words, you could not be convicted without that additional finding.

Mr. Roy: Then isn't it in proceedings for contravention of subsection 3 that the licence is suspended? That's where you face a suspension, not for--

Hon. Mr. McMurtry: "Upon conviction of the offence with which you are charged, in the circumstances indicated therein, a driver's licence may be suspended." It depends on the finding in subsection 3. In other words, you might be convicted of not coming to a stop, but they have to make that additional finding.

Mr. Elston: But they can't find subsection 3 without finding subsection 1.

Mr. Roy: I would think that, in the framing of an information so that the accused knew what he was charged with, he would know that part of the accusation against him in the information was that he had, in fact, continued to avoid the police who gave pursuit.

Mr. Chairman: Mr. Stone as draftsman perhaps has something to add.

8:50 p.m.

Mr. Stone: Mr. Chairman, the warning is given before the plea is taken. At that point, all you have is a charge under subsection 2. It is not clear yet whether subsection 3 will be invoked until the evidence indicates that.

Mr. Elston: So there never will be a charge--first of all, there will be one charge under subsection 1, but there will never be a second charge of wilfully avoiding police?

Mr. Stone: No. It's upon being convicted of an offence under subsection 2 where certain facts are found in the course of the trial. Then an additional penalty can be given.

Mr. Chairman: If you look at that, Mr. Roy, that's double-barrelled, where a person is convicted and the court is satisfied that there was a flight and so on; so that--

Mr. Roy: You are saying that the individual who is going to come to court charged may find himself in a position--and he won't know until the evidence is called whether he does--where he faces a penalty under subsection 3. Is that what you are saying? That doesn't sound like a very good justice.

Mr. MacQuarrie: On a point of order, Mr. Chairman: Looking at the bill and dealing with the amendment we have just approved as proposed by Mr. Elston, I see in subsection 2 that "offence" is referred to in paragraph 3 as well as in paragraph 4.

Mr. Elston: Yes, that's right. (Inaudible).

Mr. Stone: I submit that is correct in that case, because the charge is under subsection 2.

Mr. Roy: You see--

Mr. Chairman: I am sorry. We are not quite through with the point of order, are we, Mr. MacQuarrie?

Mr. MacQuarrie: I was wondering, Mr. Chairman, if I could get some clarification. It would seem to me to be a contravention of the same section, and that is failure to stop, bringing your vehicle to a safe stop in both instances, but maybe I am looking at it a little bit--

Hon. Mr. McMurtry: Perhaps we could clarify this by an amendment--I think it is a good point that Mr. Roy has raised--so that that clause in subsection 4 would read: "The Highway Traffic Act provides that upon a conviction of the offence with which you are charged and upon a finding pursuant to section 189(a) (3) that you wilfully continued to avoid police while a police officer gave pursuit your driver's licence shall be suspended for three years."

Mr. Elston: That would deal with the warning. What about the larger question brought up by Mr. Roy, which is, what is your information going to say to the person when you give it to him? Are you going to charge him with both wilfully avoiding police or are you going to charge him with wilfully avoiding police and not coming to a safe stop?

Mr. Roy: I don't know if you heard Mr. Stone say that when you are coming up to court, you will not know until the evidence is called whether you are potentially liable for an offence under subsection 3, which is a suspension for three years. Surely the information should recite that you are liable to be fined for that.

Hon. Mr. McMurtry: Certainly it is my view that the

information should cite that you wilfully continued to avoid police. I would have thought that it would be a defect of information if it didn't.

Mr. Roy: I would think so too, because you are facing a very serious offence yet you don't know what you are charged with. There seemed to be a suggestion by Mr. Stone that you will not know until the evidence is called whether the evidence supports a finding that you avoided the police and that the police officer gave pursuit.

Hon. Mr. McMurtry: Certainly if I were in a position to make the judgement, I would hold that if an information did not contain the allegation that you wilfully attempted to avoid police that you couldn't suffer the sanction of the minimum three-year licence suspension. I agree with you absolutely.

Mr. Roy: It is basic to an information that you know what you are charged with.

Hon. Mr. McMurtry: So there is no question in my mind that unless it was in the information a person could not suffer that penalty.

Mr. Roy: The redrafted warning is helpful in the sense that it gives the individual notice that, should he enter a plea at least, or if there is a finding, he is liable to lose his licence for a period of three years. I think that is helpful.

I do not know how we could clarify the question of the information, quite frankly.

Hon. Mr. McMurtry: I do not think you really can in the section, but I think, as you say, it is a fairly fundamental point that a court could not--

Mr. Elston: I have another question. After having moved the amendment by substituting the number "1," is that really dealing with it, because we would have to have a conviction under subsection 1, but we also have to move into subsection 3 before we get into any suspension. I am wondering if my amendment really accomplishes what we were thinking about originally.

Mr. Chairman: Mr. Elston, since subsection 3 is dependent upon a conviction under subsection 1 first--

Mr. Elston: Yes, but if you do not get the automatic suspension, just a finding of guilt, in relation to subsection 1--

Mr. Chairman: Right, and if your amendment said "3" instead of "2," instead of "1" instead of "2," would that not do it?

Interjection.

Mr. Chairman: Because you are not going to give a warning on conviction under subsection 1 only, are you?

Mr. Elston: No.



Mr. Roy: Not necessarily. In other words, if I follow the Solicitor General--and I agree with him--that if you are charged only under subsection 2, that you did not make a safe stop--

Interjection: Subsection 1.

Mr. Roy: Under subsection 1, yes, and you are liable only for the penalty under subsection 2, I think the information would recite that. On the other hand, if you are charged with both, I think the information would recite, along the lines the Solicitor General said, that you continued to avoid police. So at that point it would seem to me the warning is only given if the information involves the consequences of subsection 3; so that at subsection 4 the contravention should be of subsection 3 and not subsection 1.

Mr. MacQuarrie: To my mind, Mr. Roy is quite correct. We are really talking about two offences here: the failure to stop, and the continuance of failure to stop or proceeding to avoid police pursuit. There is a question of how you classify those offences and how they are identified for purposes of laying an information. The nature of the offence has to be clearly spelled out in the information.

Hon. Mr. McMurtry: Would you perhaps, Mr. Stone, repeat your suggestion with respect to an amendment to subsection 4?

Mr. Stone: All right. If the first line of subsection 4 read in this way: "In a proceeding for a contravention of subsection 1 in which the circumstances set out in subsection 3 are alleged..."

Mr. Roy: All right.

Mr. Chairman: Mr. Elston, would you wish to propose another amendment to your own, rather than withdraw, since we have carried that one?

Mr. Elston: If I cannot withdraw this one, it would have to be a brand-new amendment anyway, I think, by adding the words, whatever.

Interjection.

Mr. Stone: The amendment would be to amend section 189(a)(4), as contained in section 2 of the bill, by inserting, after subsection 1 in the first line, the words "in which the circumstances set out in subsection 3 are alleged."

9 p.m.

Mr. Mitchell: Then it would go on, "and before the court"?

Mr. Chairman: Yes, I believe it would carry on in exactly the same way, followed by the warning. It is to bring in Mr. Roy's point about how the information is going to read. That is what is being brought in.

Mr. Roy: Then you have a new warning. I think the Solicitor General has suggested a new warning.

Mr. Chairman: Would you move that?

Mr. Roy: I am prepared to move it. Do we need a new warning?

Hon. Mr. McMurtry: I do not know that you need a new warning, do you, Mr. Stone?.

Mr. Stone: Possibly change the "may" to "shall."

Mr. Chairman: Would you make that part of the same motion then?

Mr. Stone: To strike out "may" in the seventh line and insert in lieu thereof "shall."

Mr. Mitchell: That is in the italicized warning section.

Mr. Stone: There are seven lines, if you count down the way a printer would.

Mr. Mitchell: Right; and the other that was suggested previously is not embodied? Okay.

Mr. Chairman: Mr. Roy, are you moving that amendment in 189(a) (4)?

Mr. Roy: I can. I will move it.

Mr. Chairman: All those in favour of Mr. Roy's amendment? All those opposed?

Motion agreed to.

Mr. Elston: I wonder if we might go back to a point raised by Mr. MacQuarrie on subsection 3 and clarify that, because I feel it is important.

Mr. MacQuarrie: I am a little bit troubled by the strength of this legislation. First of all, we have two sets of penalties for two different offences; or one offence complicated by the attempt to avoid police pursuit. Now we have a person failing to come to a safe stop liable to the penalties set forth in subsection 2 and then the additional offence that is related to it, of attempting to avoid police pursuit. The only penalty there is suspension for three years. The suspension shall be in addition to any other period for which the licence is suspended and consecutive to it.

Now the question that comes up is, where you are guilty of the more serious offence, do you also stand liable to the penalties under subsection 2?

Hon. Mr. McMurtry: Yes.

Mr. Roy: That is what I thought. It was my impression under that section, from reading it, first of all that if you were guilty of anything it was under subsection 2; you were liable to a fine of \$2,000 and to jail. In addition to that, you may be guilty of something else; that is a police pursuit. So that any time you are convicted under subsection 3, subsection 2 is included. Am I concluding that correctly?

Hon. Mr. McMurtry: There would have to be a conviction under subsection 1; subsection 2 is a penalty for subsection 1, and if there is an additional finding in relation to subsection 3, there is that mandatory suspension.

Mr. MacQuarrie: There was some question as to the words in subsection 3 where it referred to the preceding subsection, whether it was subsection 1 or 2, as the actual section describing the offence. I have pretty well gone along with Mr. Stone's approach to it, but now when I look at the penalty and the application of penalties, I begin to wonder whether it should not more properly read, in subsection 3, that the subsection should be identified as subsection 1.

Mr. Elston: I think Mr. MacQuarrie is substantially right. It is impossible to offend the penalty section, I submit. This is the same argument that follows as with my amendment to subsection 4. I think he is right on.

Mr. Chairman: But it is number one, correct?

Mr. Stone: I am sorry; I may be missing subtleties.

Hon. Mr. McMurtry: Where a person is convicted of an offence under subsection 2, there is no offence under subsection 2. The offence is under subsection 1.

Mr. Stone: I'm sorry. Subsection 2 says when you are guilty of an offence. So it is only under subsection 2 that the court has authority to convict. Where a person is convicted of an offence under subsection 2, that is one way of saying it. Another way probably of saying the same thing is where a person is in contravention of subsection 1.

Mr. MacQuarrie: If the interpretation that you apply to the section is accepted, then to my mind you seem to be narrowing the penalty to just the three years' automatic suspension rather than picking up the penalties that were imposed under subsection 2.

Mr. Stone: You are saying, Mr. MacQuarrie, that the penalty in subsection 3 may be in substitution for the one in subsection 2.

Mr. MacQuarrie: That's right.

Mr. Roy: I don't follow. When would the penalty in subsection 3 be in substitution of subsection 2?

Mr. MacQuarrie: According to the strict wording in the section where a person is convicted of an offence under subsection



1, depending on how you read it. If you go for an offence under subsection 2 and attach Mr. Stone's interpretation to it, you would have the prospect of having both sets of penalties apply; but if you say a person is convicted of an offence under subsection 1 and the court is satisfied from the evidence that the person continued to avoid the police et cetera, "the court shall make an order suspending the driver's licence for a period of three years." It does not say in addition to other penalties et cetera. It just prescribes the penalty for that.

Mr. Roy: I see your point. Should you not leave it in subsection 2? If you left it in subsection 2, you would not have--

Mr. MacQuarrie: I am prepared to go with Mr. Stone's interpretation, but it still leaves me with the idea that there might be some question when it came to court.

Mr. Mitchell: Again, I am not a lawyer, Mr. Chairman, but it strikes me that the subsection 4 that we amended dealt with someone being charged. Subsection 3 deals with someone who has been convicted. That is surely the difference and that is why the numbers are different. Am I correct in my understanding?

9:10 p.m.

Mr. Stone: Yes. I think it is important in subsection 3 to say that if there is a whole proceeding, it is completed and there is a conviction, it is at that point that this other can be invoked. So it is predicated on a conviction.

Interjections.

Mr. Haggerty: If Mr. Mitchell can understand it, the judge will be able to bring in judgements.

Mr. Mitchell: Thank you very much for your kind comments.

Mr. Chairman: Is that fine, Mr. MacQuarrie? Are you settled on leaving that? Mr. Elston?

Mr. MacQuarrie: I am prepared to accept it. I am not exactly sure that the section--

Mr. Elston: We are not doing anything with the warning. We are leaving it after we have passed it.

Mr. Chairman: We have passed it with "shall." We have already changed that. That has dealt with part of the previous amendments.

Section 2, as amended, agreed to.

Sections 3 to 5, inclusive, agreed to.

Mr. Elston: I would like to move that a new section be added to the bill.

Mr. Chairman: Mr. Elston moves that section 6 be added to

the bill as follows:

"This act is repealed on the day that is three months after it comes into force or on such day thereafter as is named by proclamation of the Lieutenant Governor in Council."

Mr. Elston: Mr. Chairman, if I may just speak to the reason behind this. This matter was raised by Mr. Borovoy in his testimony to the committee and dealt with work that was being done on this particular piece of legislation. I think that is maybe what has come through, particularly tonight in clause-by-clause and from the testimony we have had. We certainly have had need to go to committee on this bill and to sort out some matters.

I think it is important, because we have not been able to go into detail on several items in the bill, that we have a time established now when we can come back and study in detail the effects of this legislation. I fully realize it has been suggested that we leave it to the resolution of this committee to bring this matter back to us some day down the road, but I am putting this amendment in so that it can be spoken to right now and so that we might even undertake to pass a resolution right away to bring this back in front of the committee. If that resolution were forthcoming, I would be pleased to withdraw my suggested amendment to the legislation.

Hon. Mr. McMurtry: It is my suggestion, Mr. Chairman, responding to Mr. Elston, that it would be a useful process five or six months down the road to give the committee an opportunity to assess the legislation and to give an opportunity to anyone who wants to make representations to the committee to do so. The only difficulty I have is just the form of the resolution in relation to the timing.

I would think, and I am just speaking off the top of my head, that there should be a resolution of the committee that there will be time set aside for the committee to consider the legislation, certainly prior to the end of 1982. How more specific you want to be than that, I do not know, given the other demands that will be made on the committee.

Mr. Piché: In other words, within six months it will be brought back to this committee for review?

Hon. Mr. McMurtry: Yes. The legislation is in force, but there will be an opportunity for people to comment on the legislation in a very public and important arena.

Mr. Williams: Mr. Solicitor General, as I understand it, this would be in lieu of a formal section being introduced in the bill of this nature.

Hon. Mr. McMurtry: Yes. Mr. Elston said he would withdraw his amendment.

Mr. Williams: You would give an undertaking that the bill would be permitted to be considered by the committee at a later date.

Mr. Elston: Maybe an undertaking would be sufficient, and we would not need a resolution.

Hon. Mr. McMurtry: I would be prepared to give an undertaking that the government would request, because I may not even be a member of the government--

Mr. Conway: Clark is not out yet, Roy.

Mr. Haggerty: You mean the bill is that bad, Roy?

Hon. Mr. McMurtry: We are all interested in assessing it. I can give an undertaking, on behalf of the government, to request the committee to assess this legislation prior to the end of 1982. We all may want a little bit of time. Is that satisfactory?

Mr. Chairman: Excuse me. I am advised that, to be a little more technical, the government House leader can have it referred back here but we cannot send it back to the House with the tag end on that it come back to ourselves at a given time.

Hon. Mr. McMurtry: We are not doing that.

Mr. Chairman: We can only take a bill, amend it, and report it back.

Mr. Roy: What we are looking at now is an undertaking and even a resolution, if necessary, of this committee that before the end of 1982 this committee will get an opportunity to review this legislation. Is that correct?

Mr. Conway: The only comment I would add to that is that the undertaking take into account that this kind of legislation means a lot more at Christmas time than it does otherwise. I would hope that whatever reference there is could be discharged before we get jammed up against the next season, so that if there are changes to be--

Mr. Chairman: The Solicitor General is on record in Hansard as having undertaken to come back during 1982. Is that not quite satisfactory?

All we can do as a committee is by way of a resolution. We can request that it come back, which is certainly no stronger than the Solicitor General's undertaking.

Mr. Elston: I would like to withdraw my proposed amendment and address a resolution to the committee that we set aside time in the fall sittings to deal with--

Mr. Chairman: We cannot set our own time aside, but we can request that of the government House leader. That is as far as we can go.

Mr. Elston: Let us not worry about what order we would take the business in. We know that the business is coming.



Mr. MacQuarrie: We have the assurance of the Solicitor General that he will bring back the report on the legislation. Being aware of that, surely when we come to schedule time in the fall we can select an appropriate time and ask if it can be done by then, because there will be reports. There could well be reports by Mr. Lucas's staff and others that would certainly be pertinent. You need some lead time, and I think it is just more appropriate now to accept his assurance that the bill will come back. We, then, at some appropriate time in the fall, can set time aside for it.

9:20 p.m.

Mr. Chairman: Or whomever is on the justice committee at that point. Is that satisfactory, Mr. Elston?

Mr. Elston: We will leave a note to our successors just in case.

Mr. Chairman: You do that. Shall I report the bill, as amended, back to the House?

Some hon. members: Agreed.

Mr. Chairman: As chairman, I thank the Liberal members for being co-operative.

Mr. Piché: Some of them.

Mr. Chairman: It did not always appear as if it would be so.

Hon. Mr. McMurtry: I will thank all of them.

The committee adjourned at 9:22 p.m.











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